SUPREME COURT, U. S.

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No. 8—Consolidated With No. 23

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

CHICAGO AND NORTH WESTERN RAILWAY COMPANY, ET AL.,
Appellants,

v.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
ET AL., *Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

REPLY BRIEF FOR APPELLANTS CHICAGO AND NORTH WESTERN RAILWAY COMPANY, ET. AL.

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PRELIMINARY STATEMENT

Appellees' attack upon the Commission's orders and its findings rests upon a basic misinterpretation of the Commission's reports. We submit that what the Commission did and the reasons for its action are to be determined by the Commission's own words and not by the characterizations, paraphrases, interpolations and abridgments of appellees' counsel. The Commission's reports, read on the normal assumption that the words used mean what they say, affirmatively show that there is nothing ambiguous or obscure about what the Commission did in relation to the divisions of rates between the Midwestern lines and Mountain-Pacific carriers or about the reasons it gave for its action.

The Commission made findings concerning the relative costs of the two groups of carriers in handling the traffic

in question and the revenue that they derive from that traffic under the present divisions. The Mountain-Pacific lines apparently concede that these cost determinations of the Commission should be assumed *arguendo* to be correct for the purposes of this appeal. (M-P RR Brief 88)

On the basis of these findings on relative costs and the present division of revenues, the Commission determined that the existing divisions were unfair to the Midwestern carriers and that those carriers should be given moderate increases in some of their more important divisions. Having found that the Midwestern lines were entitled to moderate increases, the Commission prescribed a scale of divisional factors that it found would give the Midwestern lines those increases. The Commission's finding that the scales prescribed would result in the moderate increases that they were designed to achieve is supported by substantial evidence.

In this reply we shall undertake to show that the arguments with which the appellees assail these findings and the orders of the Commission have no substance in law or fact.

I.

THE COMMISSION DETERMINED TO INCREASE THE DIVISIONS OF THE MIDWESTERN LINES ON THE BASIS OF RELATIVE COSTS AND NOT BECAUSE OF THEIR GENERAL REVENUE NEEDS

The argument of the Mountain-Pacific lines that the Commission decided to increase the Midwestern divisions because of general revenue needs is notable for its failure to mention, much less explain, the only statements in the Commission's reports that deal explicitly with its reasons for increasing the Midwestern divisions. Although we have discussed these statements in our brief in chief we shall,

in view of the nature of the arguments made by the Mountain-Pacific lines, refer again to those statements, and we shall do so in terms that will enable the Court to appraise the statements in their entirety and in the context in which they occur.

The first of the relevant statements occurs in a passage in the initial report of the Commission in which it discussed the situation of both the Eastern and the Midwestern railroads. The passage follows (R. 1033-1034):

> "Under the requirement of the public interest that all essential parts of the transportation system be maintained, so far as possible, in effective working condition *(New England Divisions, supra) we believe that* there should be increases in the complainants' divisions reflecting revenue need as well as cost..
>
> "As between the defendants and the other western railroads the differences in earning power are less marked, but our consideration of the evidence bearing on cost of service previously discussed convinces us that the primary midwestern divisions as a whole are too low."

It will be noted that the first sentence of this passage refers to the situation of the Eastern railroads, which the Commission described as "complainants," whereas the second sentence deals with the relationship between the Mountain-Pacific lines, described as "defendants," and "the other western railroads," which included the Midwestern appellants. It will also be noted that whereas in the first sentence the Commission said that there should be increases in the divisions of the Eastern lines *"reflecting revenue need as well as cost,"* it said in the second sentence that the evidence

relating to the *"cost of service"* demonstrated that the divisions of the Midwestern lines as a whole were too low.[1]

The second relevant passage occurs in the Commission's report on reconsideration. The Midwestern appellants had complained that the divisions prescribed by the Commission were unduly favorable to both the Eastern and the Mountain-Pacific lines in the light of evidence pertaining to cost of service and revenue needs. (R. 1084) The Commission rejected this contention, stating that the prescribed divisions would result in moderate increases and that (R. 1086):

> "It was our stated view that such increases were supported by the evidence concerning cost of service, but that the proposal of the midwestern lines gave undue weight to their claimed revenue need."

We submit that the two statements discussed above are plain and explicit, that they leave no doubt that the Commission decided to increase the Midwestern divisions on the basis of relative costs, and that there is no reasonable basis for the suggestion of the Mountain-Pacific lines that the Commission's orders should be set aside "for lack of clarity." (M-P RR Brief 22)

As we have said the Mountain-Pacific lines do not even refer to these passages in the Commission's reports. Instead they rely upon three other statements, not one of

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[1] It may be also noted as significant that immediately before prescribing divisions that would produce moderate increases for the Midwestern lines the Commission rejected two alternative plans for Midwestern divisions covered in the testimony of a witness for the Mountain-Pacific lines *and did so specifically on the ground that the plans were not appropriate in view of the Commission's findings on relative costs.* (R. 1039)

which is directed specifically to the Commission's reasons for increasing the divisions of the Midwestern lines.[2]

Here again it is important that the statements be read in their entirety and in context. The first of these statements is (R. 1032):

> "From our consideration of the cost evidence previously discussed in this report we are convinced that the present divisions are favorable to the defendants [Mountain-Pacific lines] to an extent not justified by ascertainable cost differences. The evidence, however, does not provide an acceptable pattern for readjusting the existing divisions, which must reflect certain broader aspects of revenue need."

There are two things to be noted about this statement and its context. The first is that the reference to the "present divisions" of the Mountain-Pacific lines is not simply to their divisions with the Midwestern lines but to their divisions with the Eastern lines as well. The second thing is that the statement is followed by five paragraphs which are largely given over to a discussion of the contentions of the Mountain-Pacific lines that they were entitled to increased divisions because of their greater general revenue needs. (R. 1032-1033) The fifth paragraph concludes with

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[2] The Mountain-Pacific lines also refer to these passages in their Statement of the case. (M-P RR Brief 7, 9) The Statement, which is somewhat tendentious, misstates in important respects the Commission's treatment of the cost issues. It asserts that "the Commission did not even purport to determine the relative costs of service of the various groups of railroads on transcontinental traffic." (M-P RR Brief 6) This is simply incorrect. The Commission determined those relative costs as its reports plainly show (R. 1008-1012, 1058-1066), and the Mountain-Pacific lines themselves in a later section of their brief discuss the "cost determinations" of the Commission. (M-P RR Brief 87) In the Statement the Mountain-Pacific lines also assert that at R. 1066 the Commission stated "that its consideration of the cost issues had been adequate for the limited purpose for which costs were used." (M-P RR Brief 9) No such statement is to be found at R. 1066.

the sentence which has been quoted above (page 3), in which the Commission found that there should be increases in the divisions of the Eastern railroads "reflecting revenue need as well as cost." (R. 1033) And that sentence is followed by a paragraph in which the first sentence, which has been quoted above (page 3), states that as between the Mountain-Pacific lines and the Midwestern lines the differences in earning power are less marked but that the evidence bearing on cost of service shows "that the primary midwestern divisions as a whole are too low." (R. 1034)

Read literally, the sentence relied upon by the Mountain-Pacific lines simply says that the cost evidence alone did not provide an acceptable pattern for readjusting all of the divisions in issue. That is not the same thing as saying that the Commission intended to adjust both categories of divisions in issue on the basis of revenue needs. And that the Commission did not intend the latter meaning is made plain by its statement in the immediately following passages that it was adjusting the Eastern divisions to reflect "revenue need as well as cost" but that it was adjusting the Midwestern divisions because the evidence on cost of service showed that those divisions as a whole were too low. (See page 3, *supra*.) We observe that although the Mountain-Pacific lines assert flatly that this obvious reading of the sentence is "wholly wrong" (M-P RR Brief 24), they make no attempt to support this assertion by any reference to or analysis of the words of the sentence or the context in which it appears.

The second statement referred to by the Mountain-Pacific lines occurs in the Commission's report on reconsideration and relates to criticisms made by these lines of the particular divisional scales prescribed by the Commission. The entire passage follows (R. 1078-1079):

"With regard to the scales of divisional factors prescribed in Appendix C for service in western territory, the petitioning defendants (Mountain-Pacific lines) state that they are not properly constructed or justified by cost. This contention incorrectly assumes that the construction of a divisional scale is primarily a matter of costs and mathematics. As the Commission pointed out in *Official-Southern Divisions,* 289 I.C.C. 4, 6-7, costs do not control the contours of rate scales and in a divisions case 'it is equally true that discretion and flexibility of judgment have attended the use of costs, particularly in determining the contours of divisional scales involving the relation of terminal and line-haul cost elements,' and 'due consideration of the respective situations of long-haul and short-haul carriers requires that the solution be based on judgment rather than formula.' "

The important point to note about this statement is that it does not even purport to relate to the Commission's reasons for deciding to increase the divisions of the Midwestern lines; the entire passage is devoted to a discussion of the mechanisms, *i. e.* the divisional scales, that the Commission had selected to carry out its substantive decision. The assertion of the Mountain-Pacific lines that in this passage "The Commission expressly held that the divisions prescribed for Midwestern railroads were not 'constructed or justified by cost' " (M-P RR Brief 23) misstates the record. The words "not properly constructed or justified by cost" are not a finding by the Commission but the Commission's statement of the contention of the Mountain-Pacific lines. (R. 1078) What the Commission said in this passage was "that the construction of a divisional scale," that is to say the framing of a remedy to correct an unlawful situation, was not "primarily a matter of cost and mathematics." (R. 1078) The Commission's references to "the contours of divisional scales," "the relation of terminal and line-haul cost elements," and "the respective situations of long-haul and short-haul carriers" make it clear beyond debate that in this

passage the Commission was discussing the technical transportation problems involved in constructing divisional scales and not its reasons for increasing the Midwestern divisions. (R.1079)[3]

The third reference of the Mountain-Pacific lines is to a passage in the Commission's report on reconsideration which they cite in a footnote and which they forbear to quote in full. (M-P RR Brief 24, note 3, referring to R. 1079) The reasons for the forbearance are obvious when the sentence is set forth in full. This sentence, like the sentence discussed in the preceding paragraph, occurs in the Commission's discussion of the particular scales prescribed. The sentence follows (R. 1079):

> "Moreover, it is reasonable to divide the rates to some extent in accordance with the way they are made and in this case the 10 percent higher factors for Mountain-Pacific territory with other adjustments give fair recognition to the evidence as to cost of service and revenue needs."

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[3] The Mountain-Pacific lines introduce a calculated element of confusion into their argument by refusing to recognize the difference between the substantive reasons of the Commission for determining that existing divisions were unlawful and should be changed, on the one hand, and the problem of selecting a mechanism to remedy the unlawful situation, on the other. They put the word "mechanism" in quotations apparently in an effort to deride our use of that term to describe the function of divisional scales. These techniques of argument are hardly seemly in view of the testimony of the Mountain-Pacific lines' own expert witness Parr. Parr testified: "Integer scales are merely proration factors which provide the mechanical means by which a proper basis of divisions is applied and made effective." (Exhibit T-299, R. 76, 189) In his discussion of the construction of divisional scales Parr referred to matters of the same kind that the Commission mentioned in the passage discussed above. Thus he spoke of the relationship between long haul and short haul carriers "where differences in length of haul are substantial" and of the relationship between intermediate, origin and destination carriers. (*Ibid.*) Parr said that he was dealing with these relationships only "as affecting the construction or the mechanics of the ultimate scales. Other factors must, of course, govern the basic determination of whether the present divisions are just and reasonable, or should be changed in one direction or the other, and, if so, in what amount." (*Ibid.*)

In this sentence the Commission explains why in constructing the divisional scales it gave the Mountain-Pacific carriers divisional factors that were 10 percent higher than those given to the Midwestern lines. To read a statement of the reasons for giving the Mountain-Pacific lines this particular advantage as stating the Commission's reasons for increasing the divisions of the Midwestern lines would be to invert the ordinary meaning of the Commission's words.

The Mountain-Pacific lines attempt to redress their incapacity to deal with the words of the Commission's reports by asserting that the position now taken by the Midwestern lines with respect to the Commission's reasons for increasing their divisions is not consistent with the position taken in the District Court. (M-P RR Brief 21, 22, 24-26) The references of the Mountain-Pacific lines do not fairly reflect the prior position of the Midwestern appellants.[4] But even

[4] It is not true, as the Mountain-Pacific lines assert, that in their Jurisdictional Statement the Midwestern lines presented this case as one in which the Commission had prescribed increases in Midwestern divisions in reliance upon revenue needs. (M-P RR Brief 26, note 6) In the Statement the Midwestern lines asserted that the conclusions of the Commission reflected a "balancing" of all of the statutory factors—a statement that merely asserted that the Commission had complied with its duty under Section 15(6). (Statement, page 9) But in the Statement the Midwestern lines also pointed out that the prescribed divisions did not give them a share of revenues out of proportion to their share of the costs and specifically referred to the Commission's finding that the increases in Midwestern divisions were supported by the findings on relative costs. (Statement, page 21, note 19) The point was made with equal emphasis in the Midwestern lines' brief in opposition to the Motion to Affirm (pages 8-9).

The references to the pleadings and argument in the District Court fall short of supporting the Mountain-Pacific assertions. The proposed finding of fact found at R. 1404 simply repeated or paraphrased certain findings made by the Commission. The excerpt from the transcript of the oral argument and the passage from the memorandum of points and authorities in opposition to the motion for an interlocutory injunction (M-P RR Brief 25-26) are too

if they did, the argument, which is reminiscent of Baron Parke and the refinements of common law pleading, does not deserve serious discussion.[5] The meaning of the Commission's orders should be determined by what the Commission said and not by attempting to score a debater's point at the expense of opposing counsel.

II.

THERE IS A RATIONAL RELATIONSHIP BETWEEN THE ORDERS OF THE COMMISSION AND ITS COST FINDINGS

In our principal brief we pointed out that the divisions prescribed by the Commission were reasonably related to its cost findings because the prescribed divisions were designed to give the Midwestern lines the moderate increases in their divisions that the Commission had found were justified on the basis of its findings on relative costs. (C&NW Brief 87-102) In reply the Mountain-Pacific lines have advanced arguments that do not, either singly or collectively, justify their assertion that the Commission's orders are invalid. (M-P RR Brief 28-35)

The Mountain-Pacific lines contend that the Commission's finding that the divisions prescribed would produce moderate increases for the Midwestern lines is not supported by

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general and ambiguous to be significant. An examination of the pleadings and briefs in the District Court suggests that the arguments in that court were directed in large part to the validity of the Commission's cost findings and to the question whether the Commission was required to make dollar findings with respect to revenue needs and the effect of the prescribed divisions, and not to the Commission's reasons for increasing the Midwestern divisions.

[5] The one authority cited by the Mountain-Pacific lines in support of their argument, *Baltimore & Ohio R. Co.* v. *Mackey*, 157 U.S. 72, is a decision by this Court in 1895 dealing with the issue whether in a wrongful death case the question whether the death was caused by a defective brake was properly submitted to the jury.

substantial evidence. The fact is that the record before the Commission contained evidence which fully supported the Commission's description of the increases prescribed for the Midwestern lines. This evidence showed the existing divisions, the routes over which the divisions applied, and the volume of traffic which moved over those routes. It was with this evidence before it that the Commission prescribed divisions that it found would produce moderate increases for the Midwestern lines.[6] In their petition for reconsideration the Midwestern lines prepared from this evidence a tabulation covering approximately 130 of the more representative and important routes for the traffic involved, showing in terms of percentage points the difference between the existing and the prescribed divisions. With this tabulation before it the Commission again found that the prescribed divisions would produce moderate increases for the Midwestern lines. (R. 1086)

Because these comparisons disclosed on their face the difference in percentage points between the existing and the prescribed divisions, they indicated precisely the effect of the changes in the divisions on each dollar of revenue received from traffic over the route to which the divisions applied. A copy of the relevant portions of that tabulation is attached to this reply brief as Appendix A. The tabulation shows that although the Midwestern lines received increases in most of the divisions covered by the tabulation, they also suffered some decreases. It shows that the divisions, measured in terms of their effect on each dollar of freight revenue involved, were truly moderate in amount.

[6] As we pointed out in our principal brief, the Commission in the passage in its initial report immediately preceding its finding that increases prescribed for the Midwestern lines were moderate (R. 1038-1039) indicated that it had examined evidence relating to the possible application and effect of different scales or combinations of scales for the purpose of prescribing new divisions. (C&NW Brief 91-92).

In a great majority of those instances in which the divisions were increased, the increases affected less than 8 cents of the revenue dollar. Indeed, in only one case did an increase affect as much as 9 cents of the revenue dollar.

The Mountain-Pacific lines' attack on the Commission's finding that the increases were moderate rests entirely on two appendices (A and B) attached to their brief. To construct these appendices the Mountain-Pacific lines have selected a much smaller number of routes than those covered in the tabulation of the Midwestern lines. While some of the routes selected may fairly be regarded as representative and important, it is obvious that others were selected without regard to whether they were either important or representative but merely because they served the particular statistical purpose that the Mountain-Pacific lines had in mind.[7] For these selected routes the Mountain-Pacific lines have compared the existing and prescribed divisions not in terms of the percentage points by which the divisions have been increased, but in terms of the percentage relationship between the amount of the increase and the existing divisions of the Midwestern lines. The effect of this device is apparent. In terms of percentage points the divisions of the Midwestern lines, which the Commission found were unlawfully depressed, are low in comparison with those of the Mountain-Pacific lines. By the hoary but transparent statistical trick of taking a percentage of a low base the Mountain-Pacific lines have been able to produce results that they assert demonstrate that the prescribed increases were not in fact moderate.[8]

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[7] For example, the routes between Stillwater, Minnesota, and St. John, Utah; between Riverdale, Iowa, and Bonners Ferry, Idaho; between Minneapolis, Minnesota, and Gallup, New Mexico; between Cincinnati, Ohio, and Juab, Utah; between Louisville, Kentucky, and Fairchild, Washington; and between Buffalo, New York, and Wingate, New Mexico. This list is not exhaustive.

[8] If the amounts of the increases were related to the high divisions of the Mountain-Pacific lines instead of to the low divisions of the Midwestern lines the percentages would be so much lower that they could not serve the purpose of the Mountain-Pacific lines.

Percentage comparisons of the kind made in the appendices to the Mountain-Pacific lines' brief are not significant in determining whether the prescribed increases are moderate in character. A more reasonable approach to that question is to consider the effect of the increases on each dollar of freight revenue involved. When the appendices of the Mountain-Pacific lines are considered in those terms, they produce an effect quite different from the one that they were designed to create. For example, it appears on the face of those appendices that of the 36 routes listed, which the Mountain-Pacific lines presumably carefully selected with an eye to producing large percentages, there are 35 instances in which the increase in the divisions will affect 15 cents or less in each revenue dollar. The best that the Mountain-Pacific lines have been able to do with their careful selection of the routes is to produce one case in which the increase in divisions will affect 20 cents in the revenue dollar. We submit that the Mountain-Pacific lines have themselves demonstrated that there is substantial evidence to support the Commission's finding that the increases were moderate in character.

In any event, the attack of the Mountain-Pacific lines on the Commission's use of the word "moderate" to describe the increases in the Midwestern divisions is merely a subsidiary part of their broader argument that there is no rational connection between the prescribed divisions and the Commission's findings on relative costs. (M-P RR Brief 28-35) The entire argument fails on the facts. The divisions prescribed by the Commission are reasonably related to its cost findings because those divisions produce results that are reasonable and justifiable under those findings.

In our principal brief we pointed out that the prescribed divisions, applied to the weighted average hauls in Midwestern and Mountain-Pacific Territories, produce divisions that are slightly more favorable to the Mountain-Pacific

lines than the divisions that would have been produced if the Commission had used scales of divisional factors constructed from costs. (C&NW Brief 70-71) The Mountain-Pacific lines attempt to deal with this comparison by an attack upon both the costs used in constructing the cost scales and upon the use of territorial average hauls. (M-P RR Brief 35-36)

The Mountain-Pacific lines' discussion of those costs is neither complete nor candid. The cost scales used in the comparison appear in Exhibit MW-773. (R. 126, 639) They are constructed from the so-called Rail Form A costs, that is to say, from costs determined according to formulas and directions prepared by the Cost Finding Section of the Commission, which are normally used by the Commission itself in determining costs. In its initial report the Commission compared these Form A costs with the costs found by the Commission on the evidence in this case. (R. 1009-1011) The costs so found by the Commission were based on the Mountain-Pacific lines' own cost study with certain adjustments that the Commission found were justified by the evidence. After comparing the Form A costs with the costs as determined by it, the Commission made the further finding that the Form A costs were the "substantial equivalent" of the costs as restated and found by the Commission. (R. 1012) Since the Mountain-Pacific lines have conceded that the Commission's cost findings must be assumed *arguendo* to be valid for the purposes of this appeal (M-P Brief 88), their attack on the cost scales used in the comparison is unwarranted.

There is likewise no substance in the Mountain-Pacific lines' contention that the comparison is invalid because it uses weighted average territorial hauls instead of particular routes. (M-P RR Brief 35-36) A comparison of the application of the prescribed divisional scales with the application of Rail Form A cost scales in the record to

movements over particular routes affirmatively shows that the Commission's prescription does not produce arbitrary and unreasonable results in relation to its findings on relative costs. In short, the validity of the comparison does not depend upon the use of the weighted average hauls. In Appendix B to this reply brief we have made such an application to each of the routes shown in Appendices A and B to the Mountain-Pacific lines' brief. It may safely be assumed that the Mountain-Pacific lines regarded the routes which they selected as their best examples of the alleged arbitrary and unreasonable operation of the prescribed divisions. Yet the fact is that, applied to these selected routes, the Commission's orders produce divisions that closely correspond to the divisions that would be produced by Form A cost scales. Indeed, the comparisons show that of the 36 routes, in 17 cases the prescribed scales and the scales constructed from costs would produce the same divisions, in 13 cases the Mountain-Pacific lines get higher divisions under the prescribed scales than they would under the cost scales, and in only 6 instances would the Mountain-Pacific lines benefit from the cost scales; in those 6 instances there is only one in which the difference would amount to as much as two percentage points.

In Appendix C to this brief, we have made similar comparisons for all of the routes that are covered in Appendix A to this brief. These comparisons show that the close relationship that exists between the divisions prescribed by the Commission and the divisions that would be produced by Form A cost scales in the case of the selected routes covered by Appendices A and B of the Mountain-Pacific brief also exists in the case of the larger and more representative selection of routes shown in our Appendix A. In the greater number of instances shown in our Appendix C, the Mountain-Pacific lines do better under the scales prescribed by the Commission than they would under

scales constructed from the Commission's Form A costs. In those instances in which the Mountain-Pacific lines do not do as well under the prescribed divisions as they would under cost scales, the differences are not sufficiently significant to support any contention that the Commission's orders produce arbitrary and unreasonable results in terms of costs.[9]

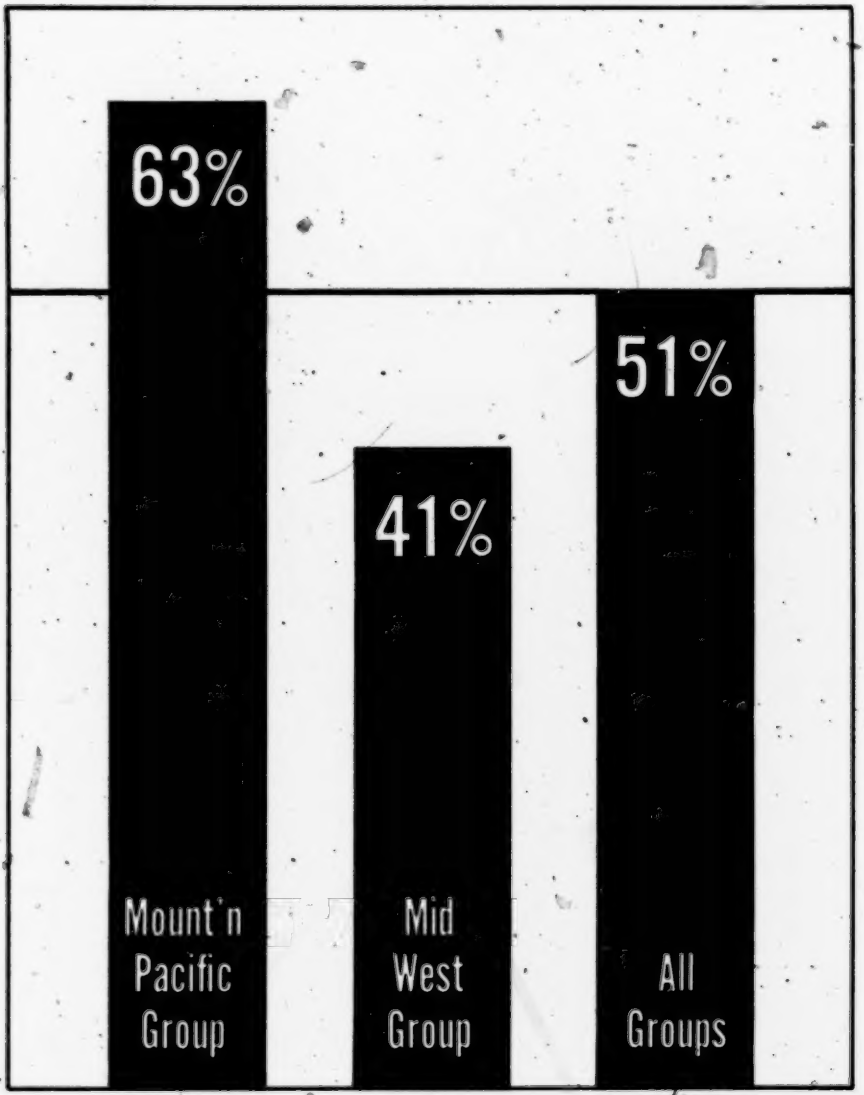
The comparisons in our Appendix B are themselves enough to refute the exercise in arithmetic that the Mountain-Pacific lines say demonstrates that the Commission's orders "would give the Midwestern appellants far greater increases than could be justified by costs." (M-P RR Brief 32) The exercise is based upon the appendices to their brief, and in our Appendix B we show that on the routes covered by these appendices the Commission's orders give the Midwestern lines for the most part increases in divisions that are the same as or less than the increases that would be produced by cost scales—not "far greater increases than could be justified by costs." This is true both as to hauls in which the Midwestern lines are intermediate between Eastern and Mountain-Pacific lines and hauls of traffic that originates or terminates in the Midwest. On the former, intermediate or bridge, type of traffic considered in its entirety there is no doubt that under the existing divisions there is a lesser discrepancy between

[9] The record discloses a reason for the close correspondence between the divisions prescribed by the Commission and the divisions that would be produced by cost scales. In constructing the prescribed scales the Commission gave the Mountain-Pacific lines factors that were 10 percent higher for their hauls in Mountain-Pacific Territory than the factors applicable to hauls of the Midwestern carriers in their territory. (R. 1039) The Form A cost scales in the record show on their face that for each mileage block the costs of the Mountain-Pacific lines exceed those of the Midwestern lines by substantially less than 10 percent. (Exhibit MW-773, R. 126, 639)

Midwestern revenues and costs than there is on Midwestern-Transcontinental traffic. This is a point that the Mountain-Pacific lines belabor. But Appendix B shows that on the majority of the routes selected by the Mountain-Pacific lines to illustrate this traffic cost-based scales would yield divisions for the Midwestern lines at least as large as those produced by the scales prescribed. In only one case do the divisions resulting from cost scales exceed those produced by the scales prescribed by as much as two percentage points. This showing exposes the fallacy in the attempt of the Mountain-Pacific lines to demonstrate that the prescribed divisions are unreasonable and arbitrary in relation to costs by comparing an overall cost-revenue discrepancy with the divisions prescribed for application to particular routes. As the comparisons in our Appendix B show, the particular divisions that the Mountain-Pacific lines have chosen for the purposes of their argument are reasonably related to costs.

The chart with which the Mountain-Pacific lines embellish their argument is no more compelling. They assert that this chart shows that the admitted discrepancies between revenues and costs "were almost entirely a matter of concern as between the Eastern group and the Mountain-Pacific group." (M-P RR Brief 31) This chart covers only part of the traffic involved, the intermediate traffic to which we have referred, which is the traffic on which the Midwestern lines received the smallest increases. If all of the traffic involved, both Official-Transcontinental and Midwestern-Transcontinental, is included in a comparable chart, as it is in the chart on the overpage, it appears that the margin of the revenues of the Midwestern lines over costs on all Transcontinental traffic is substantially lower than the margin of all of the other carriers.

Amounts by which Revenues from Present Divisions Exceed Costs of Handling Combined Official-Transcontinental & Midwest-Transcontinental Traffics



Apart from their having no foundation in fact the Mountain-Pacific lines' arguments should also be rejected because they depend upon implicit but erroneous assumptions about the legal standards that determine whether the Commission's action in this case was arbitrary and unreasonable. Thus the Mountain-Pacific lines assume that if the Commission decided to increase the divisions of the Midwestern lines on the basis of relative costs it was obligated in prescribing the increases to use a cost scale and that failure to do so shows that the Commission's action was arbitrary and unreasonable. (M-P RR Brief 32-33) We have dealt with that assumption in our principal brief. (C&NW Brief 87-90, 99, note 100) Here it is enough to repeat that the Commission, having found on the basis of costs that the Midwestern lines were entitled to moderate increases in their divisions, was entitled to use any method of prescribing new divisions that was reasonably designed to achieve those moderate increases. The Commission therefore was not legally bound in this case to prescribe divisions by the mechanism of a cost scale. This Court has sustained a Commission order prescribing divisions primarily on the basis of relative costs even though the mechanism used to prescribe the divisions was a divisional scale based upon a class rate scale and not upon costs. See *Beaumont, S.L.&W. Ry. Co.* v. *United States,* 282 U.S. 74, 80, 87-88.

The Mountain Pacific lines even go so far as to suggest that an order prescribing divisions is unlawful unless it produces for every route and for every carrier involved divisions that precisely correspond to the costs of each such route and carrier (M-P RR Brief 32-33). Long ago this Court held that in an interterritorial divisions case involving groups of carriers the Commission was not required to prescribe divisions that would produce the same results

for every carrier, every commodity and every shipment involved. *Beaumont, S. L. & W. Ry.* v. *United States, supra* at 87-88.

The Mountain-Pacific carriers' unsuccessful attempts to demonstrate that the Commission's action in this case is arbitrary and unreasonable are not advanced by their elaborate discussion of two false issues.

The Midwestern appellants have not asked and do not ask this Court to "make its own cost and traffic findings." M-P RR Brief 35-40 The Mountain Pacific lines attempt to support this charge by asserting that the Midwestern comparison of the prescribed divisions with the divisions that would be produced by cost scales is not "supported by evidence of record." This is incorrect. (M-P RR Brief 35) The cost scales and the weighted average distances used in the comparison are both in the record; the rest of the comparison is simply a matter of arithmetic. The comparison was made in the Midwestern brief in support of the contention that there was substantial evidence of record to support the Commission's finding that the increases prescribed were moderate in character. (See C&NW Brief 69-70) And the use of record material for that purpose—and for showing the route by route comparisons in the appendices to this brief—is entirely appropriate.

In this branch of their argument the Mountain-Pacific lines also refer to the fact that the Midwestern appellants commented at page 73 of their principal brief on figures taken from the reports that the Midwestern appellants have been required by the Commission to file with that agency. (M-P RR Brief 36-37) This comment was made in the course of an argument answering the Mountain-Pacific lines' contention that the Commission had not given "due

consideration" to revenue needs because it had failed to make a finding stating in dollars the revenues that would be produced by the prescribed divisions. The thrust of the Midwestern argument was that the precise dollar amount of those revenues was not a material issue and that even if the Commission had made such a finding the issues before the Court would not have been substantially affected. The use of the figures for that purpose was appropriate and did not invite this Court to make any findings on cost and traffic matters.

Since the Mountain-Pacific roads have seen fit to question the accuracy of these figures (M-P RR Brief 37), one additional comment is appropriate. Subsequent to the filing of the Midwestern brief the eight principal Mountain-Pacific lines filed quarterly reports with the Commission which cover the entire calendar year 1966. These public reports show that the Mountain-Pacific lines have determined and reported to the Commission that in that year the prescribed divisions would have diminished their revenues from the total traffic in question by approximatly $9,000,000. These reports tend to confirm the accuracy of the figures stated in the Midwestern brief and justify the inferences that were drawn therefrom. (C&NW Brief 73-74)

The Mountain-Pacific lines raise a second spurious issue by imputing to the Midwestern appellants and to the Commission views that they have never expressed. The Midwestern lines have never defended the Commission's orders on the ground that it was "impossible" for the Commission to connect those orders with its findings of fact. (M-P RR Brief 40-50) And the Commission itself never justified either its decision to increase the divisions of the Midwestern lines or the use of a mileage scale of divisional

factors to prescribe divisions on any ground of "impossibility."[10] The Mountain-Pacific lines appear to believe that these imputations provide some color of plausibility for the argument that they construct from the decision of the Commission in *Official-Southern Divisions,* 325 I.C.C. 1. The substance of this argument is that the use of a mileage scale in the present case is demonstrated to be arbitrary, unreasonable and unlawful by reason of the fact that in a later case, involving different evidence, different parties and different contentions the Commission used a cost scale. We have given this argument all of the consideration that it deserves in our principal brief, and we are content to leave the matter in that posture. (C&NW Brief 97-99)

The Mountain-Pacific lines make certain criticisms of the mileage scales of divisional factors used by the Commission to prescribe the Midwestern divisions. (M-P RR Brief 43-45) We have dealt with those criticisms in detail in our principal brief (C&NW Brief 94-101) and we shall not repeat that discussion. All of these criticisms are in essence directed to the proposition that the Commission erred because it did not use a cost scale as a mechanism for prescribing new divisions. The fact that the divisions prescribed by the Commission closely correspond to the divi-

[10] The passage from the Commission's report on reconsideration which is quoted at pages 40-41 of the Mountain-Pacific brief does not show the contrary. In discussing its choice of the means used to prescribe divisions for both the Eastern and the Midwestern traffic the Commission merely said that it found it impossible to use any of the methods proposed by the parties "as an exclusive guide or specific pattern for the divisions to be prescribed." (R. 1077) The Commission did not say that it was impossible to relate the divisions prescribed to its findings of fact. The Commission used a modification of an existing divisional scale to prescribe the Midwestern divisions. Far from finding that it was "impossible" to relate that scale to the Commission's findings, the Commission found that the scale would give the Midwestern lines the moderate increases to which they were entitled under the Commission's cost findings. (R. 1086)

sions that would have been produced by the use of a properly constructed cost scale demonstrate that these criticisms are without merit.

Two points emerge, however, from this part of the Mountain-Pacific lines' argument which deserve brief comment.

In our principal brief we responded to the argument of the Mountain-Pacific carriers that the divisional scale used by the Commission was prejudicial to them because they were the long-haul carriers by stating that the difference between the average haul in Mountain-Pacific Territory and that in Midwestern Territory was not sufficiently great to support this contention. (C&NW Brief 96) Although the Mountain-Pacific lines dispute this statement they point to no evidence in the record to support their position. They cannot do so because the statement is supported by the testimony of their own expert witness.[11] That the average territorial hauls of the two groups of carriers are sufficiently close to prevent prejudice to the Mountain-Pacific lines is demonstrated by our showing in the text above, and in Appendices B and C hereto, that the prescribed scales produce divisions equivalent or near to those that would be produced by scales based upon costs.

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[11] The Mountain-Pacific lines' own expert witness Parr, testifying on differences between cost scales and scales constructed on rate scale principles, said that the difference between the two methods "would be minor" in circumstances "where the respective hauls do not differ materially." (Exhibit T-299, R. 76, 211) He testified that an appendix to his testimony showed illustrations in which the "average hauls were relatively close." The examples given in the appendix included instances in which the ratio of the average long haul to the average short haul was as high as 35 and 59 percent. (Exhibit T-299, R. 76, 211, 218) The ratio in this case does not exceed 30 percent. (1,272 miles in Mountain-Pacific Territory and 978 miles in Midwestern Territory; Exhibit T-632, R. 112, 557)

Instead of attempting to justify their claim of prejudice on the facts the Mountain-Pacific lines retreat to the wholly formal argument that the Commission failed to make a finding, *in haec verba,* that in this particular respect the construction of the scales would not be prejudicial to them, and that the case should therefore be remanded to the Commission for such a finding. (M-P RR Brief 45-46, note 23) Unless this argument is to be regarded as embracing the principle that ritual is more important than substance, it must rest on the supposition that the Commission was ignorant of the relationship between the lengths of the average hauls in the two territories. This supposition is impermissible because the Commission itself made a finding on this point. (R. 1032)

The second point relates to the Mountain-Pacific lines' attack upon the prescription of a 15 percent minimum division for traffic originated or terminated by the Midwestern appellants at certain points in Southeastern Illinois. (M-P RR Brief 45-47) The arguments made in support of their position demonstrate beyond any doubt that on this point the Mountain-Pacific lines are simply quarreling with the Commission over the weight and economic significance of the evidence. (See C&NW Brief 102-104)

III.

THE COMMISSION'S ORDERS ARE NOT INVALID BECAUSE OF ITS TREATMENT OF REVENUE NEEDS

The assertion that the Commission increased the divisions of the Midwestern lines because of their general revenue needs and not on the basis of relative costs is the premise for the attack of the Mountain-Pacific lines on the Commission's findings on revenue needs. (M-P RR Brief 51-53) It is from this premise, and this premise alone, that

they argue that the Commission's findings are insufficient because they do not state in dollar amounts the revenue needs of the carriers and the revenue consequences of the prescribed divisions. We have pointed out at pages 3-4, *supra,* and in our principal brief (pages 45-50) that the Commission explicitly stated that it was increasing the divisions of the Midwestern carriers on the basis of relative costs. Unless the statement of the Commission that the increased divisions "were supported by the evidence concerning cost of service" (R. 1086) is to be excised from its report or rewritten to accommodate the exigencies of appellees' argument, the premise of their argument and with it the argument itself must be rejected.

But even if it is assumed *arguendo,* and in disregard of the Commission's own words, that general revenue needs entered in some degree into the Commission's decision to increase the Midwestern divisions there would still be no substance in appellees' argument that the Commission's orders here are invalid because not supported by dollar findings on general revenue needs.

The argument of the Mountain-Pacific lines rests upon the bare assertion that the contentions of the parties before the Commission on the question of revenue needs raised material issues as to the number of dollars that would be required to satisfy those needs and the number of dollars that the new divisions would produce which the Commission was obligated by the Interstate Commerce Act and the Administrative Procedure Act to resolve with specific dollar findings. The Mountain-Pacific lines do not support this assertion with any analysis of the issues before the Commission but instead resort to abstract and undisputed propositions, as for example that the Administrative Procedure Act applies to the Interstate Commerce Commission, and to the citation of inapposite authorities that

deal with circumstances that do not resemble those in this case.[12] The question under consideration is not to be resolved by tactics of this kind but rather by a modicum of attention to the issues that were actually before the Commission and to the Commission's resolution of those issues.

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[12] The Mountain-Pacific lines rely primarily upon a part of the opinion in *Chicago, Milwaukee, St. P. & P. R. Co.* v. *Illinois*, 355 U.S. 300. Their discussion of this case illustrates the wisdom of this Court's admonition in *Alabama G. S. R. Co.* v. *United States*, 340 U.S. 216, 228, that "the basic findings essential to the validity of a given order will vary with the statutory authority invoked and the context of the situation presented." In *Milwaukee* the Commission had exercised its power under Section 13(4) of the Interstate Commerce Act to increase intrastate passenger fares. The Commission undertook to raise the fares so as to produce an annual revenue, stated in dollars, which would eliminate the out-of-pocket loss from the service and allow $77,000 annually as a contribution to indirect costs and taxes. This Court held that since the Commission had found that $77,000 would be a fair contribution to indirect costs and taxes, the Commission should have supported that finding by a finding of the total dollar amount of the indirect costs and taxes. 355 U.S. at 309, 310, note 8. The holding merely indicates if the Commission undertakes to find that a stated dollar amount is a fair proportion of some other dollar amount, it should make a finding in dollars on the latter amount so that a determination of fairness can be appraised. At best the holding is simply that if the Commission attempts to deal with a particular dollar equation it must make findings on both sides of the equation in dollar amounts. The case does not hold that under Section 15(6) the Commission, in giving "due consideration" to the relative revenue requirements of groups of carriers, must make findings on the number of dollars which those needs represent. It should also be observed this Court has held that because the exercise of Commission power under Section 13(4) invades a field of regulation ordinarily reserved to the state, the Commission's findings must meet particularly stringent standards. *North Carolina* v. *United States*, 325 U.S. 507, 511; *Florida* v. *United States*, 282 U.S. 194, 212; *Chicago, Milwaukee, St. P. & P. R. Co.* v. *Illinois*, 355 U.S. 300, 305.

The decision of this Court in *Burlington Truck Lines* v. *United States*, 371 U.S. 156, also cited by the Mountain-Pacific lines, has no application here. There the Commission had failed to explain the basis on which it had exercised its discretion. Here in two elaborate reports the Commission discussed the evidence and plainly stated the reasons and basis for its orders.

Each of the three contesting groups of carriers contended that it was entitled to an increase in its divisions because of its general revenue needs. Each of the carrier groups supported this contention by offering evidence of its financial history, problems and prospects. But these contentions were not advanced in terms that required the Commission to determine for each group of carriers the particular number of dollars required to satisfy its general revenue needs. The Mountain-Pacific lines themselves concede that they did not ask the Commission to make a dollar finding on their general revenue needs but simply contended that they were entitled to "a flat ten percent increase" in their divisions. (M-P RR Brief 57, note 32) They made no attempt before the Commission and they make no attempt here to relate this ten percent increase to any stated dollar amount of general revenue needs. In this respect their tactics did not differ from the tactics of the other two carrier groups.

Faced with these conflicting claims the Commission had to resolve the issue in relative terms. It had to determine whether any one or more of the carrier groups was entitled, as compared with another, to an increase in divisions, in whole or in part because of its general revenue needs. It resolved that issue and stated the basis and reasons for its decision and its findings. It rejected the contention of the Mountain-Pacific lines that their general revenue needs entitled them to an increase in their divisions or to the maintenance of the present divisions. (R. 1068) Specifically, it rejected the contention of the Mountain-Pacific lines that they were entitled to increased divisions to provide a source of investment funds. (R. 1033) It rejected the contention of the Midwestern lines that their general revenue needs en-

titled them to the increases in divisions provided by their proposal. (R. 1029, 1086) In this resolution of the problem the particular number of dollars required to satisfy the general revenue needs of carriers was in no sense a material issue. It was not a material issue because the number of dollars was not in itself a fact that the Commission was required to find in order to reach its decision about the relative revenue needs of the carrier groups. It reached that conclusion by giving due consideration to and making findings on the evidence that the carriers themselves had presented with respect to their revenues, their earning power and their rates of return.

What has been said above applies to the insistence of the Mountain-Pacific lines that the Commission should have made a finding stating the number of dollars that would be produced by the new divisions. Indeed, the Mountain-Pacific lines themselves link the two things together. They argue that the Commission's obligation to make a finding on the number of dollars that would be produced by the new divisions is a necessary consequence of its alleged obligation to make a finding stating the revenue needs of the groups of carriers in dollars. (See, for example, M-P RR Brief 54, 64, 65) Since, as we have shown above, the particular number of dollars required to meet the revenue needs of the groups of carriers was not an issue that was material to the Commission's resolution of the problem of revenue needs, it follows that the Commission was not obligated to make a corresponding finding with respect to the revenue effects of the prescribed divisions.

In conclusion we observe that the Mountain-Pacific lines have not attempted to articulate, even in general terms, any relationship between the merits of the Commission's decision on the question of revenue needs and the dollar findings that they assert were essential to the validity of its

orders. They have not attempted to show this Court that the findings alleged to be necessary would be in any sense relevant in determining on judicial review whether the Commission in resolving the question of revenue needs complied with its statutory obligations under Section 15(6) of the Interstate Commerce Act. Here, as elsewhere in their case, the argument of the Mountain-Pacific lines betrays an obsession with form at the expense of substance.

IV.

THE COMMISSION DID NOT ERR IN ITS TREATMENT OF PASSENGER DEFICITS AND CAPITAL REQUIREMENTS

A.

The Mountain-Pacific lines attempt to tie the treatment by the Commission of their purported special need for capital funds to its treatment of the passenger deficits of the various groups of carriers. (M-P RR Brief 66-76) This attempt forces the Mountain-Pacific lines to construct a Commission opinion that does not exist in the pages of the I.C.C. Reports.

What the Mountain-Pacific lines say is that it was only because of their deficits from passenger service that the Commission rejected their bizarre contention that they should receive more revenues from the rates being divided than they would otherwise be entitled to because their operations were growing faster than those of the other railroads. The theory underlying this contention contemplates that the joint rates—and thus the other railroad participants in the rates and ultimately shippers—should make a direct contribution to meeting the capital needs of the Mountain-Pacific lines rather than merely providing them with a margin of revenues above costs that enables them to attract capital.

No manipulation of passenger deficit figures was necessary to lead the Commission to reject this odd theory. The

Commission rejected it because it was found to have no basis in fact. In respect of their capital needs the Mountain-Pacific lines were found not to stand differently from the other groups of carriers. The Commission had before it not only the evidence of the Mountain-Pacific lines as to their capital needs, but also the evidence of the Midwestern carriers as to their own great need for capital funds. (Exhibit M-W609, R. 111, 531-538) The Commission thoroughly considered the evidence concerning capital needs to meet the demands of the growing far West, which was submitted both by the carriers and the regulatory commissions of the Mountain-Pacific states. (R. 1025-1026, 1031-1033, 1068) It found that railroads in every section of the country were "faced with the continuing necessity of raising funds for additions and betterments and new equipment, and we cannot recognize a difference in the degree of this urgency among the territorial groups." (R. 1033) No question has been raised as to the substantiality of the evidence supporting the Commission's finding. It fully satisfies any requirement imposed by Section 8(b) of the Administrative Procedure Act. Contrary to the assertion of the Mountain-Pacific lines (M-P RR Brief 69, note 43), this finding (R. 1033) was separated by pages from the discussion of the passenger deficits and had nothing whatever to do with that discussion. (R. 1023-1028)

We have fully and accurately discussed the Commission's treatment of passenger deficits in our opening brief. (C& NW Brief 61-66) The Commission, in dealing with the general revenue need issue, considered primarily comparative rates of return of the various groups of carriers from all their services. (R. 1018-1023, 1027-1029) It also considered how the carriers were affected by comparative passenger deficits, including the deficit passenger services. (R. 1023-1028) This was a natural enough inquiry since it was

freight rates that were being divided. The Commission considered how the increasing passenger deficits of the Mountain-Pacific lines affected their attempted statistical showing that they had received no return on capital expenditures they had made in late years. (R. 1026-1027)[13] Neither in this discussion nor elsewhere did the Commission state or imply that the Mountain-Pacific lines could solve whatever financial problems they had by a wholesale discontinuance of passenger service and that such a discontinuance should be encouraged. Thus the implications that the Mountain-Pacific lines and the state commissions profess to see in the Commission's discussion of passenger deficits are simply not

[13] The statistics merely showed that net railway operating income had not increased while investment had increased. (R. 1026) To say on this basis that no return was realized on the new investment is just a dramatic way of saying that return on investment had decreased. The Commission found that if freight operations alone were considered, net income had increased. *(Ibid.)* The net of the argument of the Mountain-Pacific lines and the State commissions on this score is that the Commission erred in measuring freight service earnings against freight service investments. The error in such a course is difficult to discern—especially when the Commission ultimately found that the Mountain-Pacific carriers were better situated than the other groups even on the basis of rates of return burdened by the passenger deficits. (R. 1027).

But all of this, both the Mountain-Pacific lines' statistical showing and the Commission's analysis of it, was pretty much irrelevant to the Mountain-Pacific lines' claim to special treatment because of their *future* capital needs. For, whether profitable or not, the historical capital expenditures of the Mountain-Pacific lines had been financed, and the Mountain-Pacific lines made no contention that they had been prevented by lack of sufficient capital funds from expanding and improving their plants enough to render adequate service. The claim to special treatment because of the asserted extraordinary need for future capital funds could not, therefore, logically rest upon this historical experience, although the Mountain-Pacific lines now attempt in their brief to combine the two separate points. And it is perfectly clear that the Commission rejected the Mountain-Pacific lines' contention concerning their future capital needs for the reason stated in the passage quoted in the text—basically that the Mountain-Pacific lines had not proved that they were unique in this respect—and not for any reason having to do with passenger deficits.

present. Indeed, the Commission explicitly denied that it had any such thought in mind. (R. 1075)

In the end, after it had fully discussed the passenger deficits, the Commission found that even on the computation that it considered most favorable to the Mountain-Pacific carriers, they were better off—less in need of additional revenues from Transcontinental traffic to maintain them as efficient carriers—than either of the other two groups. And this was a computation of rates of return for a representative number of years from all services. (R. 1027) This computation was not affected at all by the passenger deficit discussion.

Moreover, as in the case of most of its discussion of relative revenue needs, the Commission's treatment of passenger deficits was chiefly by way of comparing the Eastern carriers with the Mountain-Pacific carriers and, indeed, with Western carriers (both Midwestern and Mountain-Pacific lines) as a consolidated group. (See, *e.g.*, R. 1023) Like the passenger deficits of the Mountain-Pacific lines, those of the Midwestern lines increased in the period that the Commission considered relevant (R. 1028), and the Commission took this fact into account in rejecting the contention of the Midwestern lines that they were entitled to increased divisions on account of general revenue needs.

Finally, there is no merit whatever to the claim of the Mountain-Pacific lines, in the course of which there is even a ritualistic invocation of the due process clause, that they were denied a hearing covering the passenger deficit question. The purpose of an evidentiary hearing is to ascertain and develop facts. Here the facts concerning the passenger deficit, its size and manner of computation were of record or subject to notice, and there was no dispute about them. The Mountain-Pacific lines claimed in substance that they had been denied the opportunity to put arguments about the

significance of these facts—arguments that could be made quite well by counsel—in the mouths of expert witnesses and thereby prolong further an already protracted proceeding. It is understandable, then, that the Mountain-Pacific lines did not take seriously their own allegation that they had been denied a hearing on this point. After the Commission rendered its initial decision, containing the passenger deficit discussion of which the Mountain-Pacific carriers now complain, those carriers filed a petition for reconsideration but not for a further hearing of evidence on this or any other point.

B.

The arguments in the briefs of the intervening regulatory commissions of the Western states track the arguments advanced by the Mountain-Pacific carriers. The State commissions, however, in presenting those arguments tend to emphasize the claim that the Commission erred in rejecting the contention of the Mountain-Pacific lines that they were entitled to preferential treatment in the prescription of divisions because they had a greater need than any of the other carriers for funds to invest in new facilities.

At points in their argument the States suggest that although the Commission made a finding rejecting the contention it gave no reasons for the rejection. (Ariz. Brief 25; Calif. Brief 21). The infirmity in this argument lies in the fact that the Commission did give a reason for its rejection of the argument. The Commission found that the facts showed that the railroads in all sections of the country are faced with continuing necessity for additions and betterments and new equipment and that there was no difference in the degree of the need for investment funds among the territorial groups. (R. 1033) This is the finding quoted at page 30 above.

Faced with this finding and statement of the Commission's reasons, the State commissions had no recourse but to resort to arguments that have nothing to do with the sufficiency of the Commission's findings but are really directed against the Commission's appraisal of the evidence. In short, the States' quarrel with the Commission is that it did not reject or disregard the evidence offered by other carrier groups and accept in toto and without question the evidence the States assert established the extraordinary and peculiar revenue needs of the Mountain-Pacific lines.

The nature of the States' arguments is well illustrated by their insistence that the rich and powerful Mountain-Pacific roads have substantially less income for distribution to their shareholders than do the smaller and less affluent Midwestern roads. (Ariz. Brief 26-27; Calif. Brief 27) This contention rests upon an exhibit (Exhibit T-275, R. 140-145) which the Midwestern lines completely discredited in the course of the proceeding before the Commission. The exhibit was distorted in its inception because the "Principal Midwestern Roads" with which the Mountain-Pacific roads were compared, eight in number, included three Mountain-Pacific subsidiaries and only four members of the Midwestern group contesting the divisions case. (R. 141) Furthermore, techniques were used in the exhibit that the Commission explicitly disapproved, namely, consideration of the acquisition adjustment account and the use of book value as representing investment. (R. 1018-1022) The Midwestern lines submitted rebuttal exhibits (Exhibit MW-609, R. 111, 522-530, 543-550; Exhibit MW-738, R. 124, 612, 617-619) that laid bare these and other defects in the Mountain-Pacific exhibit. The Midwestern lines showed that, as the unquestioned rate of return figures relied upon by the Commission (R. 1027) necessarily indicated, the shareholders of the Mountain-Pacific lines were better situated than the shareholders of the Midwestern

lines. In view of these facts it is not remarkable that the Commission declined to give overriding weight to the Mountain-Pacific exhibit.

The bulk of the arguments of the State commissions are of a piece with the argument which rests on the exhibit we have just described. They are arguments directed to the weight of the evidence, or to the inferences that should be drawn from the evidence, or to judgments that the Commission made, on the basis of evidence, on questions of transportation economics. Even if these arguments raised issues appropriate for judicial review, which they do not, the State commissions have failed to show any error by the Commission that would justify invalidation of its orders.

V.

THE COMMISSION DID NOT ERR IN ITS CONSIDERATION AND TREATMENT OF INDIVIDUAL CARRIERS

The decision of the District Court is no longer defended by any party on the holding of the District Court that "the Commission is required to make affirmative findings which disclose that the requirements of Section 15(6) have been met and the factors therein required have been determined and considered, not only as to the group of roads involved but with respect to each carrier affected in said groups. . . ." (R. 1733) Rather, the argument now is that three carriers should have been given special treatment by the Commission. These are the Denver and Rio Grande Western, a Mountain-Pacific carrier, and the Katy and the Frisco, which are Midwestern carriers. This claim for preferential treatment was made by the three carriers for the first time in petitions for reconsideration. In its supplemental report the Commission carefully considered the claim and stated its reasons for denying it. (R. 1080-1081, 1089-1091)

Although in the arguments on behalf of these carriers it is made to appear that they are somehow invoking the traditional rule that evidence in a divisions case must be typical of the carriers whose rates are being divided, *New England Divisions Case,* 261 U. S. 184, 196-199, the fact is that there is no evidence and indeed no claim that the Rio Grande, the Katy and the Frisco are anything but typical with respect to the kinds of matters that underlie the prescription of a divisional structure for groups of carriers in different territories. Thus, each of the three carriers joined with the other carriers in its respective group to present evidence relating to the kind of traffic carried, the through rate structure, the operating conditions, the costs incurred in handling the traffic involved, and investment in carrier property devoted to that traffic, which was represented to the Commission as being typical evidence for all the carriers in the group. In the presentation of evidence and in all the proceedings up to the issuance of the Commission's initial report, the three carriers represented themselves as typical of their respective groups so far as these and similar factors were concerned.

This Court stated in *Beaumont, S. L. & W. Ry. Co.* v. *United States,* 282 U. S. 74, 82-83, that the Commission may prescribe divisions "upon evidence which it reasonably may deem typical and to have sufficient probative weight to justify the necessary findings and the order in respect of each rate." Here, the conduct and the representations of the parties gave the Commission every reason to believe that the group evidence before it was typical and of ample probative weight. In this situation the Commission was clearly justified in acting on the basis that the evidence presented was "typical in character, and ample in quantity, to justify the finding made in respect to each division of each rate of every carrier." *New England Divisions Case, supra,* at 197. Section 8(b) of the Administrative Procedure

Act requires findings only as to "material issues." Since there was no issue, material or immaterial, with respect to the question of typicality of evidence, no finding on that subject was required.

The claim of the Katy and the Frisco to special consideration arises solely from the fact that, as compared with other carriers in the Midwestern group, they were relatively better off under the existing divisions and therefore the prescribed divisions had something of an adverse effect upon them. In the case of the Rio Grande the especially adverse impact, if any, of the prescribed divisions is a result of that carrier's relationship with other Mountain-Pacific carriers. Situations such as these do not require the Commission to depart from its pattern of evenhanded treatment of carriers represented and shown to be properly considered as members of territorial groups.

In the following subsections, dealing first with the Rio Grande and then with the Katy and the Frisco, we shall show that the treatment the three carriers received was invited by them and that their claims to special consideration were fully considered by the Commission, and, finally, that the extent of any adverse impact on them is much less than has been claimed or implied.

A. The Commission Did Not Err In Its Treatment of the Rio Grande

The assertion of the Mountain-Pacific lines that the Commission's orders would have a "far worse" effect upon the Rio Grande than upon any other carrier in Mountain-Pacific Territory is misleading. (M-P RR Brief 82-83) The Commission did not prescribe any divisions for hauls of the Rio Grande; the divisions prescribed are for the *combined*

hauls of the Rio Grande and its connecting carriers west of the Utah junctions.[14]

The assertion of the Mountain-Pacific lines that the impact of the Commission's orders upon the Rio Grande is due to "the nature of the divisional scales . . . and the way in which those scales would apply" is simply not true. (M-P RR Brief 81) The scale prescribed for Mountain-Pacific Territory is applied west of the Colorado junctions (Denver and Pueblo) to the combined hauls of the Rio Grande and its connecting carriers west of the Utah junctions (Ogden and Salt Lake City). The resulting revenue can be divided as the Rio Grande and the Mountain-Pacific carriers that connect with it see fit.[15] The compensation of the Rio Grande out of Transcontinental rates will depend upon agreements it may make with carriers operating west of the points where it connects with them in Utah, or, failing agreement, subdivisions the Commission may prescribe

[14] The directly connecting carriers of the Rio Grande at the Utah junctions are the Southern Pacific Company, the Union Pacific Railroad Company, and the Western Pacific Railroad Company.

[15] The Rio Grande situation may be illustrated by a shipment from Kansas City to San Francisco via the Missouri Pacific Railroad to Pueblo, Colorado, the Rio Grande to Ogden, Utah, and the Southern Pacific beyond. The present divisions break at Ogden. The Missouri Pacific and the Rio Grande receive 53.5 percent of the rate for their combined haul from Kansas City to Ogden, and the Southern Pacific receives 46.5 percent of the rate for its haul west of Ogden. The Kansas City-Ogden portion of the 53.5 percent is subdivided over Pueblo as between the Missouri Pacific and the Rio Grande, 40 percent of the 53.5 percent going to the former, and 60 percent to the latter. (Exhibit MW-194, page 16) The Commission prescribed a primary divisional break at Pueblo (border of Mountain-Pacific Territory); and prescribed divisional scales which produce 31 percent for the haul of the Missouri Pacific from Kansas City to Pueblo and 69 percent for the combined haul of the Rio Grande and Southern Pacific from Pueblo to San Francisco. Acceding to the request of the Mountain-Pacific lines, including the Rio Grande, that no subdivisions be prescribed for the services of individual carriers within Mountain-Pacific Territory (R. 880-883), the Commission did not divide the Pueblo-San Francisco portion of the 69 percent as between the Rio Grande and the Southern Pacific.

in a proceeding instituted for that purpose. (C&NW Brief 84) The procedure followed by the Commission, at the insistence of the Mountain-Pacific lines, was to leave the Mountain-Pacific lines to deal in the first instance with the subdivisions in Mountain-Pacific Territory. *Cf. New England Divisions Case,* 261 U. S. 184, 203.[16]

The Mountain-Pacific lines are in the anomalous position of complaining to this Court that the Commission erred in prescribing a pattern of divisions in Mountain-Pacific Territory which they themselves urged. In prescribing primary divisions for the combined services of the Rio Grande and the carriers west of the Utah junctions, without at the same time prescribing subdivisions for the services of the individual carriers, the Commission followed the course which the Mountain-Pacific lines, including the Rio Grande, explicitly asked it to follow. These lines should not be heard to complain of administrative action which they invited.

Moreover, it is not at all clear that the Rio Grande has anything like as much to complain of as has been indicated

[16] The alleged disruption of the competitive relationship between the routes of the Rio Grande and the Union Pacific (M-P RR Brief 84-85, note 56) was considered by the Commission, and it pointed out that the Mountain-Pacific lines had urged that "such matters were extraneous to the issues." (R. 1080-1081) The Mountain-Pacific lines attempt to escape from the views expressed by them prior to the issuance of the initial report and order of the Commission by asserting that those views "related to the very different circumstances of the Examiners' report which recommended negotiations to determine specific divisions *before* any change in the existing structure was to be made." (M-P RR Brief 84-85, note 56) This argument overlooks the fact that the Examiners recommended the same primary divisional breaking structure (although not the same divisions) as the Commission ultimately prescribed. This resulted in primary divisional breaks over routes via the Rio Grande at the Denver and Pueblo gateways rather than the Utah gateways. (R. 754, 782-789) The argument of the Mountain-Pacific lines also overlooks the fact that the Commission provided in its order that the carriers "may, if they so agree, establish percentages other than those determined as herein provided for the purpose . . . of equalizing competing routes or gateways." (R. 1104; 1091)

by some of the extravagant claims on its behalf. Estimates of the reductions in its revenues resulting from the Commission's prescription of new divisions have run as high as $8,500,000. (R. 913; see Ariz. Brief 44)[17] In fact, the public reports made by the Rio Grande pursuant to accounting instructions of the Commission show that the Rio Grande estimates that in 1966 it would have received $850,000 less than it did receive from Transcontinental traffic if the prescribed divisions that remain in issue had been in effect.

B. The Commission Gave Fair Treatment to the Katy and the Frisco

The contention of the Katy and the Frisco that the Commission refused to consider the impact of the prescribed divisions on them is put forward in the face of the fact that the Commission devoted seven paragraphs of its supplemental report to their petitions for reconsideration and further hearing. (R. 1089-1091) This consideration by the Commission, in which it concluded that there was "no reason for making a special exception" for the Frisco and the Katy (R. 1091), is a full answer as well to the argument of those carriers that the Commission erroneously relied on a waiver by them of their right to be considered individually. Whether or not a holding of waiver would have been error, the Commission did not decide the Katy-Frisco's claims on that ground.

The principal claim of the Katy and the Frisco is that the Commission failed to give them "equal" treatment. (Katy-Frisco Brief 14, 19) The Commission did give them such treatment by prescribing for them the same divisional scales as it prescribed for other Midwestern lines. (R. 1101-1105) The fact that the existing divisions of the Katy

[17] The brief for Arizona Corporation Commission, et al. compares the claimed $8,500,000 reduction with a net income of $10,500,000 for the Rio Grande. (Ariz. Brief 44)

and the Frisco on some parts of their Transcontinental traffic are higher than the prevailing basis for the Midwest may well have resulted in reductions in the total revenues of those carriers which exceed their gains on other parts of their Transcontinental traffic; but the Commission found that this was not a sufficient ground for prescribing a different divisional basis for service over their lines. (R. 1090-1091)

The Katy and the Frisco overlook the obvious fact that when just, reasonable and equitable divisions are prescribed for general application in a territory, the divisions so prescribed may result in a reduction in the total revenue of a railroad that has been able to negotiate more favorable divisions on certain commodities than the generality of the carriers with which it is grouped. That is exactly what the Katy and the Frisco had been able to do with respect to lumber, which is a very important commodity in the Transcontinental freight movement. (R. 1090)

Even so, it is now demonstrable that, as in the case of the Rio Grande, the effect of the divisions prescribed by the Commission on the Katy and the Frisco, extravagantly described by them (Katy-Frisco Brief 5-6), has been much overstated. Both carriers have made partial settlements with the Mountain-Pacific lines, and after those settlements it is only with respect to hauls in Midwestern Territory in which they participate with one or more of these appellants that they would be affected at all by the prescribed divisions. According to their public reports to the Commission, in 1966 the revenues of the Katy would have been the same under the prescribed divisions that are still in issue as they were in fact, and the Frisco would have received under the prescribed divisions that remain in issue $153,000 less than it actually received.

VI.

THE CHALLENGES BELOW TO THE COMMISSION'S COST DETERMINATIONS WERE INSUBSTANTIAL

The Commission found that the existing divisions were unlawful and prescribed new divisions because the existing divisions of the Midwestern lines were too low when measured by costs. That finding of an imbalance in the cost-revenue relationship was based upon comparisons of the respective revenues of the Mountain-Pacific and the Midwestern lines from the Transcontinental traffic with the costs each group incurred in handling that traffic. Revenues were compared with (1) costs that reflected the Commission's restatement of the Mountain-Pacific lines' cost study to correct six fundamental errors in their study, and (2) costs determined by the use of the Commission's cost formula, Rail Form A. The Commission found that the two comparisons produced only small differences and that "one substantiates the other." (R. 1012) Underlying the subsidiary cost findings just described were further findings, and statements of bases and reasons for findings, that were grounded in the weight assigned by the Commission to thousands of pages of cost evidence. (R. 991-1015, 1058-1066)

In the court below the Mountain-Pacific lines challenged five of the six corrections that the Commission made in its restatement of their cost study. The Commission's restatement of costs, although the Mountain-Pacific lines seek to disparage it by use of quotation marks (*e.g.*, M-P RR Brief 31), includes without change all other cost elements in the Mountain-Pacific lines' cost study. These include the assignment of cost to gathering areas, interchange switching costs, intertrain and intratrain switching costs, train crew wages, miscellaneous train expenses, train fuel,

other running costs, terminal costs, short-line railroad costs, special services costs, including specific costs for Eastern terminals, transloading, and reconsignments and diversions. (R. 1009)

The Mountain-Pacific lines contend that the failure of the Commission to accept their cost study without correction raises "substantial" issues that should be thoroughly analyzed by a reviewing court of first instance. They imply that the issues are far reaching and that questions of important principle in transportation costing are involved. As we have said, the Commission found it necessary to make only six changes in the cost study submitted in evidence by the Mountain-Pacific lines, and only five of these were challenged below. Two of these corrections—locomotive expense and car expense (see R. 1004-1006, 1064)—primarily concern the dispute between the Mountain-Pacific lines and the Eastern lines and do not affect divisions between the Midwestern and the Mountain-Pacific carriers. (R. 1342-1343) That leaves three items in issue. Thus, it is misleading to speak, as the Mountain-Pacific carriers do, of "but one of the issues not reached by the district court", and of an alleged overriding error "as to many of the cost elements." (M-P RR Brief 92)

With respect to these discrete cost issues, there is no "underlying problem" (M-P RR Brief 90) of substituting average costs of all traffic for specific costs of the Transcontinental traffic. Indeed, quite the reverse is true of the one cost issue that the Mountain-Pacific lines discuss at length in their brief. (M-P RR Brief 90-92) In their computation of roadway expense and return the Mountain-Pacific lines used an average cost for the entire country while the Commission substituted, as more indicative of the cost of handling the traffic involved, the costs attributable to the respective territories. The Commission's treatment

of the technical problems associated with its substitution is exhaustive, thoughtful and dispositive. (R. 999-1004, 1060-1063)

The Mountain-Pacific lines suggest that within the remaining cost issues—two in number—there are significant questions concerning the duty of parties to come forward with data in their possession and the power of the Commission to compel them to produce data. (M-P RR Brief 92-93) This is not so. The passage from the Commission's report quoted by the Mountain-Pacific lines concerning the unavailability of data (M-P RR Brief 93) went to just one of the corrections the Commission made in their cost study. This was in an element of cost related to the return of empty freight cars. In fact, the Midwestern lines did come forward with specific empty return data. (R. 1060; Exhibits MW-592, MW-767, page 1) But in any event it is clear from its reports that the Commission rejected the Mountain-Pacific lines' study of empty return characteristics of cars for reasons quite independent of the inability of those lines to produce comparable data from other territories. (R. 997-999, 1060)

The other outstanding cost issue has to do with the proper manner of computing the carriers' return element, and this is a matter of technique and expert judgment and not of substantiality of the evidence. (R. 1007, 1019-1020, 1065)

Given the Commission's thorough consideration of these cost questions and the apparent expressed attitude of the court below toward them (R. 1723, 1732, 1733), this Court need not hesitate to decide this entire case and put an end to litigation that has already lasted too long, as the Government has urged it to do. (U.S. Brief 61-62)

Certainly the Court should not forbear from this course for the reasons given in the *amicus* brief of the Southern Governors' Conference. The concern of the Conference is based upon an apparent misconception of the Commission's

treatment of the cost issues in this case. The Conference states that the Commission's cost findings in another divisions case in which the Conference is interested "reflect the very same approach that it used in the *Transcontinental* case" in that the Commission relied in both cases "almost exclusively upon the average costs of handling all traffic in these territories in reaching its conclusions." (Sou. Gov. Brief 3) The Conference has been misled.

The assertion that the Commission relied on "average costs of handling all traffic" in the *Transcontinental* case is simply not so. Furthermore, analysis of the statement of the 23 cost issues in the divisions case in which the Southern Governors are interested, known as the *Official-Southern* case, attached as Appendix A to the Conference's brief, indicates that most of the cost questions are not common to the two cases. Of the five cost items challenged by the Mountain-Pacific lines in this case only two—empty return and car costs—are even within the issues raised in the *Official-Southern* case, and the car-cost issue is of no consequence in this litigation as between the Midwestern lines and the Mountain-Pacific lines. (R. 1342-1343) Any error of the Commission in assigning car costs was not prejudicial to the Mountain-Pacific lines, vis-a-vis the Midwestern lines, since the Commission's correction was of benefit solely to the Eastern railroads. That correction indeed works to the disadvantage of the Midwestern lines, vis-a-vis the Mountain-Pacific lines. With respect to empty return cost, we cannot understand how any decision of this Court could affect what a court might or should hold on the different facts of record in the *Official-Southern* case.

The cost issues in this case are so plainly within the peculiar competence of the Commission and its resolution of them was so plainly grounded in the evidence and in reason that a substantial question relating to them would

be raised only if on remand the reviewing court were to depart from the accepted standards of judicial review and accept the Mountain-Pacific lines' criticisms.

VII

THE DISTRICT COURT IN REMANDING THE CASE TO THE COMMISSION HAD A DUTY TO PROTECT THE RIGHTS OF THE PARTIES PENDING THE ULTIMATE DETERMINATION OF THE CONTROVERSY

Appellants' request that the District Court reserve jurisdiction to require equitable resettlements of the divisions involved after a further decision of the Commission on remand is not premature as the Mountain-Pacific lines assert. (M-P RR Brief 97) It was made in the District Court at the only time at which that court could effectively act (in the absence of a direction from this Court), and there will be no subsequent opportunity to renew the request in this Court.

At the behest of the Mountain-Pacific lines the District Court exercised its equitable jurisdiction to stay the Commission's orders, so that the Mountain-Pacific lines have continued to receive divisions found unjust, unreasonable and inequitable by the Commission. If the District Court is not directed to retain jurisdiction and if the Commission should again find that the existing divisions are unlawful as to the Midwestern lines, recovery by the Midwestern lines of their just share of Transcontinental freight revenues could be had, if at all, only through a multiplicity of suits brought in various jurisdictions where the 58 Mountain-Pacific lines could be served. A request made in advance, to anticipate contingencies, is not a premature request if no further opportunity to anticipate those contingencies will arise.

A direction to the District Court to retain jurisdiction would not require impermissible speculation. The proceed-

ings before the Commission arose on complaints and cross-complaints that the Commission is required by law to decide. *Interstate Commerce Commission* v. *Baird,* 194 U. S. 25, 39. If the case is returned to the Commission and the parties persist in the litigation, the Commission will be bound to make additional findings and enter a new order.

The request of the Midwestern lines that the District Court retain jurisdiction does not require this Court or the District Court now to speculate about the nature of any additional findings or new order the Commission may enter. Specifically, the validity of the request does not depend, as the Mountain-Pacific lines suggest (M-P RR Brief 97-98), on the assumption that the Commission will necessarily enter an order identical with its present order. The request rests on the simple ground that the District Court should retain equitable jurisdiction so that if future action by the Commission creates a situation in which equitable relief is appropriate, that court will not have lost power to grant that relief.

This is precisely the kind of action that this Court required the District Court to take in *United States* v. *Morgan,* 307 U. S. 183.[18] The attempt of the Mountain-Pacific

[18] In the *Morgan* case, pending review of an order of the Secretary of Agriculture prescribing a lower schedule of rates for the services of market agencies at a public stockyard, the difference between the revenues produced by the old, higher, schedule and the new was impounded. On review the order was held invalid because the Secretary had failed to accord a full hearing. *Morgan* v. *United States,* 298 U. S. 468; 304 U. S. 1. The Secretary thereupon reopened the administrative proceeding. The market agencies asked that the impounded funds be distributed to them since the administrative order that was the basis for the impounding had been set aside. The reviewing District Court granted the request, but this Court reversed. *United States* v. *Morgan,* 307 U. S. 183. This Court held that the District Court should retain jurisdiction over the impounded moneys pending the further decision of the Secretary in the administrative proceeding, and that his further order, if supported by evidence and made in accordance with law, would provide the appropriate basis for distribution of the impounded funds. 307 U. S. at 192, 198.

lines to distinguish the *Morgan* case on the ground that the Secretary of Agriculture had power to grant "retroactive relief in the form of reparations" is invalid. (M-P RR Brief 101, note 69) The *Morgan* case involved an investigation entered into by the Secretary upon his own motion, and, as this Court pointed out, the Packers and Stockyards Act prohibited him from making an order for the payment of money in an investigation so instituted. 307 U. S. at 192. Indeed, the Secretary's lack of power to award reparation was the basis for the decision of this Court that the District Court had a duty to use its equitable powers to protect the interests of the customers of the market agencies. 307 U. S. at 190-198.

Our request rests upon two principles that we submit should commend themselves to the Court. The first is that "court and agency are not to be regarded as wholly independent and unrelated instrumentalities of justice," but should coordinate their actions in the interest of just and effective enforcement of the Congressional mandate. *United States* v. *Morgan*, 307 U. S. 183, 190-191.[19] The second cardinal principle, even more apposite here, is that when a district court sits as a court of equity and exerts its extraordinary powers to stay the effectiveness of an administrative order, "it assumes the duty of" dealing with results of its stay "in conformity to equitable principles." 307 U. S. at

[19] If there is no reservation of jurisdiction it may well be impossible for the judicial branch to give any vitality to the Commission's original finding that the existing divisions are unlawful insofar as that finding may be reflected in any order on remand. See *Atlantic Coast Line R. Co.* v. *Florida*, 295 U.S. 301, 313-315.

191.[20] Here, unless jurisdiction is retained, the chance will have been forgone to deal on equitable principles and on the basis of the order finally entered by the Commission with the divisional settlements that have been made pursuant to the court's stay of the Commission's 1963 orders.

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[20] The case of *Lehigh Valley Cooperative* v. *United States*, 370 U. S. 76, cited by the Mountain-Pacific lines (M-P RR Brief 100-101) is inapposite. In that case it was doubtful whether the Secretary of Agriculture had power under the regulatory statute involved to adopt regulations which would accomplish the purpose of those held invalid, and it was uncertain what, if any, further proceedings he could or might see fit to take. 370 U. S. at 99. Furthermore, the passage from the Court's opinion quoted by the Mountain-Pacific lines shows that what was done in the case is altogether consistent with the *Morgan* case: The Court left open the possibility that impounded funds could ultimately be used to make any regulations promulgated on remand operate retrospectively. *Ibid.*

CONCLUSION

For the reasons stated here and in our opening brief, the judgment of the District Court should be reversed.

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APPENDIX A

Comparisons of Present and Prescribed Divisions (Stated as Percentages of Through Rates) Which Support the Commission's Finding That the Prescribed Divisional Scales Would Produce Moderate Increases in Midwestern Divisions*

OFFICIAL-TRANSCONTINENTAL TRAFFIC

Between—and	Present Midwestern Division	Prescribed Midwestern Division	Increase (Except R Indicates Reduction)	Present Midwestern Division	Prescribed Midwestern Division	Increase (Except R Indicates Reduction)
		Midwestern Haul, Chicago-Denver				
		San Francisco			Los Angeles	
New York	25.0%	26.0%	1.0	23.1%	27.0%	3.9
Pittsburgh	28.7	30.0	1.3	26.6	32.0	5.4
Detroit	29.9	32.0	2.1	27.7	34.0	6.3
		Midwestern Haul, Chicago-Pueblo				
New York	24.9	26.0	1.1	23.1	28.0	4.9
Pittsburgh	28.1	30.0	1.9	26.6	33.0	6.4
Detroit	29.3	32.0	2.7	27.7	35.0	7.3
		Midwestern Haul, Chicago-El Paso				
New York	40.6	32.0	R8.6	40.6	37.0	R3.6
Pittsburgh	46.8	37.0	R9.8	46.8	44.0	R2.8
Detroit	48.7	40.0	R8.7	48.7	46.0	R2.7
		Midwestern Haul, East St. Louis-Denver				
New York	21.2	23.0	1.8	19.4	24.0	4.6
Pittsburgh	24.8	27.0	2.2	22.6	29.0	6.4
Detroit	25.8	29.0	3.2	23.6	31.0	7.4
		Midwestern Haul, East St. Louis-Pueblo				
New York	21.2	23.0	1.8	19.4	25.0	5.6
Pittsburgh	24.8	27.0	2.2	22.6	29.0	6.4
Detroit	25.8	29.0	3.2	23.6	32.0	8.4

* In its supplemental report the Commission said: "The midwestern complainants show numerous examples of divisions produced by our findings which support the statement in our original report that the scales in Appendix C would result in 'moderate increases in some of the most important midwestern divisions.'" (R. 1086) These examples were shown in appendices to the Petition of Midwestern Complainants for Modification and Reconsideration of Report and Order of March 21, 1963, as Amended, where record sources were cited. The Commission also had before it traffic studies which showed the volume and flow of traffic over all of the routes through the Midwest. (See e.g., Exhibits MW-433 and MW-434). The comparisons between the present and the prescribed divisions here shown appeared in the above-described petition of the Midwestern lines; the columns showing the changes in percentage points did not appear in that petition but have been added.

	Present Midwestern Division	Prescribed Midwestern Division	Increase (Except R Indicates Reduction)	Present Midwestern Division	Prescribed Midwestern Division	Increase (Except R Indicates Reduction)
		Midwestern Haul, East St. Louis-El Paso				
Between— and		San Francisco			Los Angeles	
New York	34.9%	28.0%	R6.9	34.9%	33.0%	R1.9
Pittsburgh	40.8	34.0	R6.8	40.8	40.0	R0.8
Detroit	42.6	37.0	R5.6	42.6	43.0	0.4
		Midwestern Haul, Chicago-Council Bluffs				
New York	12.0	13.0	1.0	12.0	13.0	1.0
Pittsburgh	13.8	15.0	1.2	13.8	15.0	1.2
Detroit	14.4	16.0	1.6	14.4	16.0	1.6
		Midwestern Haul, Chicago-Kansas City				
New York	12.0	11.0	R1.0	12.0	12.0	—
Pittsburgh	13.8	13.0	R0.8	13.8	14.0	0.2
Detroit	14.4	14.0	R0.4	14.4	15.0	0.6
		Midwestern Haul, Chicago-Santa Rosa				
New York	32.3	24.0	R8.3	32.3	28.0	R4.3
Pittsburgh	37.2	28.0	R9.2	37.2	33.0	R4.2
Detroit	38.8	30.0	R8.8	38.8	35.0	R3.8
		Midwestern Haul, East St. Louis-Kansas City				
New York	8.3	8.0	R0.3	8.3	9.0	0.7
Pittsburgh	9.7	10.0	0.3	9.7	11.0	1.3
Detroit	10.1	11.0	0.9	10.1	11.0	0.9
		Midwestern Haul, East St. Louis-Floydada				
New York	24.7	18.0	R6.7	24.7	20.0	R4.7
Pittsburgh	28.8	22.0	R6.8	28.8	24.0	R4.8
Detroit	30.1	23.0	R7.1	30.1	26.0	R4.1
		Midwestern Haul, Chicago-El Paso				
Between— and		Phoenix				
New York	40.6	42.0	1.4			
Pittsburgh	46.8	51.0	4.2			
Detroit	48.7	54.0	5.3			
		Midwestern Haul, East St. Louis-El Paso				
New York	34.9	37.0	2.1			
Pittsburgh	40.8	43.0	2.2			
Detroit	42.6	48.0	5.4			

	Present Midwestern Division	Prescribed Midwestern Division	Increase (Except R Indicates Reduction)	Present Midwestern Division	Prescribed Midwestern Division	Increase (Except R Indicates Reduction)
		Midwestern Haul, Chicago-Santa Rosa				
Between—		Phoenix				
and						
New York	32.3%	32.0%	R0.3			
Pittsburgh	37.2	38.0	0.8			
Detroit	38.8	41.0	2.2			
		Midwestern Haul, East St. Louis-Floydada				
New York	24.7	22.0	R2.7			
Pittsburgh	28.8	26.0	R2.8			
Detroit	30.1	28.0	R1.1			
		Midwestern Haul, Chicago-Twin Cities				
Between—		Seattle			Spokane	
and						
New York	12.0	12.0	—	12.0%	12.0%	—
Pittsburgh	13.8	14.0	0.2	13.8	15.0	1.2
Detroit	14.4	15.0	0.6	14.4	16.0	1.6
		Midwestern Haul, Chicago-Council Bluffs				
New York	12.0	13.0	1.0	12.0	13.0	1.0
Pittsburgh	13.8	15.0	1.2	13.8	16.0	2.2
Detroit	14.4	16.0	1.6	14.4	17.0	2.6

MIDWESTERN-TRANSCONTINENTAL TRAFFIC

Between	Midwestern Haul	Present Midwestern Division	Prescribed Midwestern Division	Increase (Except R Indicates Reduction)
Chicago and				
Seattle	Chicago-Twin Cities	16.5%	21.0%	4.5
Spokane		16.5	23.0	6.5
St. Louis and				
Seattle	St. Louis-Twin Cities	18.5	24.0	5.5
Spokane		18.5	27.0	8.5
Kansas City and				
Seattle	Kansas City-Twin Cities	16.5	22.0	5.5
Spokane		16.5	25.0	8.5
Oklahoma City and				
Seattle	Oklahoma City-Twin Cities	33.2	28.0	R5.2
Spokane		33.2	32.0	R1.2
Memphis and				
Seattle	Memphis-Twin Cities	25.0	31.0	6.0
Spokane		25.0	34.0	9.0
New Orleans and				
Seattle	New Orleans-Twin Cities	33.5	38.0	4.5
Spokane		33.5	42.0	8.5
Chicago and				
San Francisco	Chicago-Council Bluffs	16.5	22.0	5.5
Los Angeles		16.5	22.0	5.5
Green Bay and				
San Francisco	Green Bay-Council Bluffs	22.0	24.0	2.0
Los Angeles		22.0	24.0	2.0
Sault Ste. Marie and				
San Francisco	Sault Ste. Marie-	22.0	30.0	8.0
Los Angeles	Council Bluffs	22.0	30.0	8.0
Minneapolis and				
San Francisco	Minneapolis-Council Bluffs	13.8	18.0	4.2
Los Angeles		13.8	18.0	4.2
Des Moines and				
San Francisco	Des Moines-Council Bluffs	12.1	13.0	0.9
Los Angeles		12.1	13.0	0.9
Sioux City and				
San Francisco	Sioux City-Council Bluffs	12.1	11.0	R1.1
Los Angeles		12.1	11.0	R1.1
Chicago and				
San Francisco	Chicago-Kansas City	16.5	20.0	3.5
Los Angeles		16.5	21.0	4.5

Between	Midwestern Haul	Present Midwestern Division	Prescribed Midwestern Division	Increase (Except R Indicates Reduction)
St. Louis and				
San Francisco	St. Louis-Kansas City	12.1%	16.0%	3.9
Los Angeles		12.1	17.0	4.9
Minneapolis and				
San Francisco	Minneapolis-Kansas City	13.8	20.0	6.2
Los Angeles		13.8	21.0	7.2
Des Moines and				
San Francisco	Des Moines-Kahsas City	12.1	14.0	1.9
Los Angeles		12.1	15.0	2.9
Oklahoma City and				
San Francisco	Oklahoma City-Kansas City	20.0	14.0	R6.0
Los Angeles		20.0	15.0	R5.0
Memphis and				
San Francisco	Memphis-Kansas City	16.5	20.0	3.5
Los Angeles		16.5	22.0	5.5
New Orleans and				
San Francisco	New Orleans-Kansas City	30.0	27.0	R3.0
Los Angeles		30.0	29.0	R1.0
St. Louis and				
San Francisco	St. Louis-Floydada	36.0	31.0	R5.0
Los Angeles		36.0	35.0	R1.0
Kansas City and				
San Francisco	Kansas City-Floydada	29.0	25.0	R4.0
Los Angeles		29.0	29.0	—
Oklahoma City and				
San Francisco	Oklahoma City-Floydada	28.0	17.0	R11.0
Los Angeles		28.0	20.0	R8.0
Memphis and				
San Francisco	Memphis-Floydada	35.0	31.0	R4.0
Los Angeles		35.0	35.0	—

DIVIDING POINTS

The Mountain-Pacific lines which interchanged traffic with Midwestern lines at the dividing points in the foregoing comparisons were as follows:

Denver, Colo.—The Atchison, Topeka and Santa Fe Railway Company, The Denver and Rio Grande Western Railroad Company, and Union Pacific Railroad Company.

Pueblo, Colo.—The Atchison, Topeka and Santa Fe Railway Company and The Denver and Rio Grande Western Railroad Company.

El Paso, Texas—The Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Company.

Council Bluffs, Iowa—Union Pacific Railroad Company.

Kansas City, Mo.—The Atchison, Topeka and Santa Fe Railway Company and Union Pacific Railroad Company.

Santa Rosa, N. M.—Southern Pacific Company.

Floydada, Texas—The Atchison, Topeka and Santa Fe Railway Company.

Twin Cities, Minn.—Great Northern Railway Company and Northern Pacific Railway Company.

APPENDIX B

Comparisons of Prescribed Divisions of Midwestern Railroads and Divisions Produced by Use of Rail Form A Cost Scales (Exhibit MW-773, R. 126, 639)*

MIDWESTERN-TRANSCONTINENTAL TRAFFIC (CITY PAIRS AND ROUTES ARE TAKEN FROM M-P RR BRIEF, APPENDIX A)

Shipment Moving Between:	Midwestern Haul	Present Division	Prescribed Division	Form A Cost Scale Division
Chicago, Ill. and San Francisco, Calif. (via Council Bluffs-Cheyenne)	Chicago-Council Bluffs	16.5%	22%	23%
Chicago, Ill. and Portland, Ore. (via Council Bluffs-Cheyenne)	Chicago-Council Bluffs	16.5	22	23
Chicago, Ill. and Los Angeles, Calif. (via Kansas City-Belen)	Chicago-Kansas City	16.5	23	24
Chicago, Ill. and Spokane, Wash. (via Twin Cities-Medora)	Chicago-Twin Cities	16.5	23	24
Minneapolis, Minn. and Richmond, Calif. (via Kansas City-Cheyenne)	Minneapolis-Kansas City	13.8	19**	20
St. Louis, Mo. and Spokane, Wash. (via Twin Cities-Medora)	St. Louis-Twin Cities	18.5	27	29
St. Louis, Mo. and Los Angeles, Calif. (via Kansas City-Belen)	St. Louis-Kansas City	12.1	18	18
Cedar Rapids, Iowa and Reno, Nev. (via Council Bluffs-Cheyenne)	Cedar Rapids-Council Bluffs	12.1	19	19
Chicago, Ill. and Glendive, Mont. (via Twin Cities-Medora)	Chicago-Twin Cities	22	36	39

* The Rail Form A costs from which the scales were constructed were found by the Commission to be the "substantial equivalent" of the Commission's restatement of costs. (R. 1012)

** In verifying the divisions stated in the appendices to the brief of the Mountain-Pacific lines the Midwestern appellants determined that minor errors were apparently made in the computation of certain of those divisions. In those instances this appendix state what is believed to be the correct division. The corrections do not substantially affect the comparisons made in the appendices.

Shipment Moving Between:	Midwestern Haul	Present Division	Prescribed Division	Form A Cost Scale Division
Minneapolis, Minn. and Boise, Idaho (via Council Bluffs-Cheyenne)	Minneapolis-Council Bluffs	13.8%	23%	23%
Minneapolis, Minn. and Shafter, Calif. (via Kansas City-Belen)	Minneapolis-Kansas City	13.8	24**	25
Stillwater, Minn. and St. John, Utah (via Council Bluffs-Cheyenne)	Stillwater-Council Bluffs	13.8	26**	27
Chicago, Ill. and St. John, Utah (via Council Bluffs-Cheyenne)	Chicago-Council Bluffs	16.5	30	32
Riverdale, Iowa and Bonners Ferry, Idaho (via Minneapolis-Williston)	Riverdale-Minneapolis	12.1	23	22
Minneapolis, Minn. and Phoenix, Ariz. (via Kansas City-Belen)	Minneapolis-Kansas City	13.8	27	29
St. Louis, Mo. and Flagstaff, Ariz. (via Kansas City-Belen)	St. Louis-Kansas City	12.1	24	24
St. Louis, Mo. and Boise, Idaho (via Council Bluffs-Cheyenne)	St. Louis-Council Bluffs	12.1	25	26
Minneapolis, Minn. and Gallup, N. Mex. (via Kansas City-Belen)	Minneapolis-Kansas City	13.8	34	36

** In verifying the divisions stated in the appendices to the brief of the Mountain-Pacific lines the Midwestern appellants determined that minor errors were apparently made in the computation of certain of those divisions. In those instances this appendix states what is believed to be the correct division. The corrections do not substantially affect the comparisons made in the appendices.

OFFICIAL-TRANSCONTINENTAL TRAFFIC (CITY PAIRS AND ROUTES ARE TAKEN FROM M-P RR BRIEF, APPENDIX B)

Shipment Moving Between:	Midwestern Haul	Present Division	Prescribed Division	Form A Cost Scale Division
New York, N. Y. and San Francisco, Calif. (via Chicago-Council Bluffs-Cheyenne)	Chicago-Council Bluffs	16.5%	19%	19%
Detroit, Mich. and Oakland, Calif. (via Chicago-Council Bluffs-Cheyenne)	Chicago-Council Bluffs	16.5	19	19
New York, N. Y. and Los Angeles, Calif. (via Chicago-Kansas City-Belen)	Chicago-Kansas City	16.5	20	19
New York, N. Y. and Spokane, Wash. (via Chicago-Twin Cities-Medora)	Chicago-Twin Cities	16.5	20	20
Detroit, Mich. and Los Angeles, Calif. (via Milwaukee-Kansas City-Belen)	Milwaukee-Kansas City	16.5	21	21
Cincinnati and Spokane, Wash. (via St. Louis-Twin Cities-Medora)	St. Louis-Twin Cities	18.5	24	24
Detroit, Mich. and San Francisco, Calif. (via Peoria-Council Bluffs-Cheyenne)	Peoria-Council Bluffs	12.1	16	16
Louisville, Ky. and Fairchild, Wash. (via St. Louis-Twin Cities-Williston)	St. Louis-Twin Cities	18.5	24**	24
Indianapolis, Ind. and Elgin, Ore. (via Chicago-Council Bluffs-Cheyenne)	Chicago-Council Bluffs	16.5	23	22

** In verifying the divisions stated in the appendices to the brief of the Mountain-Pacific lines the Midwestern appellants determined that minor errors were apparently made in the computation of certain of those divisions. In those instances this appendix states what is believed to be the correct division. The corrections do not substantially affect the comparisons made in the appendices.

Shipment Moving Between:	Midwestern Haul	Present Division	Prescribed Division	Form A Cost Scale Division
McKeesport, Pa. and Boise, Idaho (via Chicago-Council Bluffs-Cheyenne)	Chicago-Council Bluffs	16.5%	24%	24%
Philadelphia, Pa. and Nogales, Ariz. (via Chicago-Kansas City-El Paso)	Chicago-Kansas City	16.5	24	23
Cincinnati, O. and San Francisco, Calif. (via St. Louis-Council Bluffs-Cheyenne)	St. Louis-Council Bluffs	12.1	17**	17
Cleveland, O. and Nampa, Idaho (via Peoria-Council Bluffs-Cheyenne)	Peoria-Council Bluffs	12.1	21**	21
Cleveland, O. and Flagstaff, Ariz. (via St. Louis-Kansas City-Belen)	St. Louis-Kansas City	12.1	20	18
Pittsburgh, Pa. and Ontario, Oregon (via Peoria-Council Bluffs-Cheyenne)	Peoria-Council Bluffs	12.1	20	20
Cleveland, O. and Gallup, N. Mex. (via Chicago-Kansas City-Belen)	Chicago-Kansas City	16.5	29	29
Buffalo, N.Y. and Wingate, N. Mex. (via St. Louis-Kansas City-Belen)	St. Louis-Kansas City	12.1	22**	21
Cincinnati, O. and Juab, Utah (via St. Louis-Omaha-Cheyenne)	St. Louis-Omaha	12.1	24	24

** In verifying the divisions stated in the appendices to the brief of the Mountain-Pacific lines the Midwestern appellants determined that minor errors were apparently made in the computation of certain of those divisions. In those instances this appendix states what is believed to be the correct division. The corrections do not substantially affect the comparisons made in the appendices.

APPENDIX C

Comparisons of Present and Prescribed Divisions With Divisions Determined by Use of Rail Form A Cost Scales (Exhibits 724-726 and Exhibit MW-773, R. 126, 639)*

MIDWESTERN-TRANSCONTINENTAL TRAFFIC

Between	Midwestern Haul	Present Midwestern Division	Prescribed Midwestern Division	Form A Cost Scale Division
Chicago and				
Seattle	Chicago-Twin Cities	16.5%	21.0%	20.9%
Spokane		16.5	23.0	23.8
St. Louis and				
Seattle	St. Louis-Twin Cities	18.5	24.0	24.9
Spokane**		18.5	27.0	28.4
Kansas City and				
Seattle	Kansas City-Twin Cities	16.5	22.0	21.9
Spokane		16.5	25.0	25.1
Oklahoma City and				
Seattle	Oklahoma City-Twin Cities	33.2	28.0	30.3
Spokane		33.2	32.0	34.2
Memphis and				
Seattle	Memphis-Twin Cities	25.0	31.0	32.7
Spokane		25.0	34.0	36.5
New Orleans and				
Seattle	New Orleans-Twin Cities	33.5	38.0	41.1
Spokane		33.5	42.0	45.4
Chicago and				
San Francisco	Chicago-Council Bluffs	16.5	22.0	22.9
Los Angeles		16.5	22.0	22.9
Green Bay and				
San Francisco	Green Bay-Council Bluffs	22.0	24.0	25.2
Los Angeles		22.0	24.0	25.2
Sault Ste. Marie and				
San Francisco	Sault St. Marie-	22.0	30.0	31.4
Los Angeles	Council Bluffs	22.0	30.0	31.4

* The Rail Form A costs from which the scales were constructed were found by the Commission to be the "substantial equivalent" of the Commission's restatement of costs. (R. 1012)

** The percentages between these markets shown in this appendix differ from those shown in Appendix B, because the percentages in this appendix are computed over the Ft. Buford, N. D., route and the percentages in Appendix B are computed over the Medora, N. D., route.

Between	Midwestern Haul	Present Midwestern Division	Prescribed Midwestern Division	Form A Cost Scale Division
Minneapolis and				
San Francisco	Minneapolis-Council Bluffs	13.8%	18.0%	18.3%
Los Angeles		13.8	18.0	18.3
Des Moines and				
San Francisco	Des Moines-Council Bluffs	12.1	13.0	11.6
Los Angeles		12.1	13.0	11.6
Sioux City and				
San Francisco	Sioux City-Council Bluffs	12.1	11.0	8.8
Los Angeles		12.1	11.0	8.8
Chicago and				
San Francisco	Chicago-Kansas City	16.5	20.0	20.4
Los Angeles*		16.5	21.0	22.0
St. Louis and				
San Francisco	St. Louis-Kansas City	12.1	16.0	15.8
Los Angeles*		12.1	17.0	17.2
Minneapolis and				
San Francisco	Minneapolis-Kansas City	13.8	20.0	20.2
Los Angeles		13.8	21.0	21.9
Des Moines and				
San Francisco	Des Moines-Kansas City	12.1	14.0	13.2
Los Angeles		12.1	15.0	14.4
Oklahoma City and				
San Francisco	Oklahoma City-Kansas City	20.0	14.0	13.5
Los Angeles		20.0	15.0	14.7
Memphis and				
San Francisco	Memphis-Kansas City	16.5	20.0	20.8
Los Angeles		16.5	22.0	22.4
New Orleans and				
San Francisco	New Orleans-Kansas City	30.0	27.0	28.3
Los Angeles		30.0	29.0	30.5
St. Louis and				
San Francisco	St. Louis-Floydada	36.0	31.0	33.6
Los Angeles		36.0	35.0	38.0
Kansas City and				
San Francisco	Kansas City-Floydada	29.0	25.0	26.8
Los Angeles		29.0	29.0	30.8
Oklahoma City and				
San Francisco	Oklahoma City-Floydada	28.0	17.0	17.6
Los Angeles		28.0	20.0	20.7
Memphis and				
San Francisco	Memphis-Floydada	35.0	31.0	33.1
Los Angeles		35.0	35.0	37.5

* The percentages between these markets shown in this appendix differ from those shown in Appendix B, because the percentages in this appendix are computed over the Pueblo, Colo., route and the percentages in Appendix B are computed over Belen, N. M., route.

OFFICIAL-TRANSCONTINENTAL TRAFFIC*

Between—and	Present Midwestern Division	Prescribed Midwestern Division	Form A Cost Scale Division	Present Midwestern Division	Prescribed Midwestern Division	Form A Cost Scale Division
		Midwestern Haul, Chicago-Denver				
		San Francisco			Los Angeles	
New York	25.0%	26.0%	27.2%	23.1%	27.0%	27.9%
Pittsburgh	28.7	30.0	31.3	26.6	32.0	32.3
Detroit	29.9	32.0	33.8	27.7	34.0	35.0
		Midwestern Haul, Chicago-Pueblo				
New York	24.9	26.0	26.8	23.1	28.0	28.3
Pittsburgh	28.1	30.0	30.8	26.6	33.0	32.8
Detroit	29.3	32.0	33.3	27.7	35.0	35.6
		Midwestern Haul, Chicago-El Paso				
New York	40.6	32.0	34.5	40.6	37.0	38.4
Pittsburgh	46.8	37.0	39.4	46.8	44.0	44.6
Detroit	48.7	40.0	42.4	48.7	46.0	48.5
		Midwestern Haul, East St. Louis-Denver				
New York	21.2	23.0	23.0	19.4	24.0	23.7
Pittsburgh	24.8	27.0	26.5	22.6	29.0	27.3
Detroit	25.8	29.0	28.1	23.6	31.0	29.0
		Midwestern Haul, East St. Louis-Pueblo				
New York	21.2	23.0	22.7	19.4	25.0	24.0
Pittsburgh	24.8	27.0	26.1	22.6	29.0	27.7
Detroit	25.8	29.0	27.6	23.6	32.0	29.5
		Midwestern Haul, East St. Louis-El Paso				
New York	34.9	28.0	29.6	34.9	33.0	33.0
Pittsburgh	40.8	34.0	33.9	40.8	40.0	38.3
Detroit	42.6	37.0	35.8	42.6	43.0	40.8
		Midwestern Haul, Chicago-Council Bluffs				
New York	12.0	13.0	12.8	12.0	13.0	12.8
Pittsburgh	13.8	15.0	14.9	13.8	15.0	14.9
Detroit	14.4	16.0	16.1	14.4	16.0	16.1
		Midwestern Haul, Chicago-Kansas City				
New York	12.0	11.0	11.5	12.0	12.0	12.1
Pittsburgh	13.8	13.0	13.2	13.8	14.0	14.1
Detroit	14.4	14.0	14.3	14.4	15.0	15.3
		Midwestern Haul, Chicago-Santa Rosa				
New York	32.3	24.0	27.1	32.3	28.0	30.2
Pittsburgh	37.2	28.0	31.0	37.2	33.0	35.1
Detroit	38.8	30.0	33.3	38.8	35.0	38.1

* The Midwestern divisions in this appendix, pages 3c and 4c, do not correspond to those in Appendix B, pages 3b and 4b, *supra*, because this appendix shows the Midwestern proportion of the through rate between the East and Transcontinental Territory and Appendix B shows the Midwestern proportion of only the Western segment of the rate.

	Present Midwestern Division	Prescribed Midwestern Division	Form A Cost Scale Division	Present Midwestern Division	Prescribed Midwestern Division	Form A Cost Scale Division
		Midwestern Haul, East St. Louis-Kansas City				
Between—		San Francisco			Los Angeles	
and						
New York	8.3%	8.0%	7.6%	8.3%	9.0%	8.0%
Pittsburgh	9.7	10.0	8.7	9.7	11.0	9.2
Detroit	10.1	11.0	9.2	10.1	11.0	9.8
		Midwestern Haul, East St. Louis-Floydada				
New York	24.7	18.0	19.2	24.7	20.0	20.8
Pittsburgh	28.8	22.0	22.0	28.8	24.0	24.3
Detroit	30.1	23.0	23.3	30.1	26.0	25.8
		Midwestern Haul, Chicago-El Paso				
Between—		Phoenix				
and						
New York	40.6	42.0	43.2			
Pittsburgh	46.8	51.0	51.2			
Detroit	48.7	54.0	56.5			
		Midwestern Haul, East St. Louis-El Paso				
New York	34.9	37.0	37.1			
Pittsburgh	40.8	43.0	44.1			
Detroit	42.6	48.0	47.4			
		Midwestern Haul, Chicago-Santa Rosa				
New York	32.3	32.0	34.0			
Pittsburgh	37.2	38.0	40.2			
Detroit	38.8	41.0	44.4			
		Midwestern Haul, East St. Louis-Floydada				
New York	24.7	22.0	23.1			
Pittsburgh	28.8	26.0	27.4			
Detroit	30.1	29.0	29.5			
		Midwestern Haul, Chicago-Twin Cities				
Between—		Seattle			Spokane	
and						
New York	12.0	12.0	11.1	12.0	12.0	12.1
Pittsburgh	13.8	14.0	12.9	13.8	15.0	14.3
Detroit	14.4	15.0	14.1	14.4	16.0	15.8
		Midwestern Haul, Chicago-Council Bluffs.				
New York	12.0	13.0	12.7	12.0	13.0	13.4
Pittsburgh	13.8	15.0	14.6	13.8	16.0	15.6
Detroit	14.4	16.0	15.9	14.4	17.0	17.0